# code of federal regulations

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## Money and Finance: Treasury

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COMPLETED
ORIGINAL

## 31

PARTS 0 TO 199
**Revised as of July 1, 1982**

022-003-94805-8

THE NATIONAL ARCHIVES OF THE UNITED STATES
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# code of federal regulations

## Money and Finance: Treasury

## 31

PARTS 0 to 199

**Revised as of July 1, 1982**

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ee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty or other personnel administration matter in connection with such matter.

(c) *Section 207(a).* Section 207(a) prohibits a former employee at any time after his employment has ceased, from knowingly acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States has a direct and substantial interest and in which he participated personally and substantially as an employee.

(d) *Section 207(b).* Section 207(b) prohibits any such former Government employee within one year after his employment from appearing personally before any court or Department or agency as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested and which was under his official responsibility within 1 year prior to the termination of such responsibility.

(e) *Section 208.* Section 208 prohibits any employee from participating personally and substantially as a Government employee in any particular matter in which to his knowledge he, his spouse, minor child, partner, or organization in which he is an employee or prospective employee, has a financial interest. An employee may be exonerated from the provisions of this section if he makes full disclosure of the financial interest to the official responsible for his appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of his service.

(f) *Section 209.* Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of his salary as compensation for his services as an employee from any source other than the Government. This section does not apply to a special Government employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards or expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4101-4118.

### RULES OF CONDUCT

**§ 0.735–30 Proscribed actions.**

An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

**§ 0.735–30a Political activity.**

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familiarize themselves with the statutory provisions and the Civil Service Commission's regulations on this subject (5 U.S.C. 7324-7327 and 5 CFR Part 733). It is unlawful for employees to solicit, receive or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees. (18 U.S.C. 602, 603, 606, 607.) Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures subject to the limitations set forth in 18 U.S.C. 608. Employees may be disqualified for employment for knowing-

*Cite this Code* CFR

*thus:* 31 CFR 0.735-1

# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

## ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

| | |
|---|---|
| Title 1 through Title 16 | as of January 1 |
| Title 17 through Title 27 | as of April 1 |
| Title 28 through Title 41 | as of July 1 |
| Title 42 through Title 50 | as of October 1 |

The appropriate revision date is printed on the cover of each volume.

## LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

## HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

## EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

## OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

## OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949–1963, or 1964–1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

## INCORPORATION BY REFERENCE

*What is incorporation by reference?* Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

*What is a proper incorporation by reference?* The Director of the Federal Register will approve an incorporation by reference only when the requirements of 1 CFR Part 51 are met. Some of the elements on which approval is based are:

(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR 51.4.

Properly approved incorporations by reference in this volume are listed in the Finding Aids at the end of this volume.

*What if the material incorporated by reference cannot be found?* If you have any problem locating or obtaining a copy of material listed in the Finding Aids of this volume as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Service, Washington DC 20408, or call (202) 523–4534.

## CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

## INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
*Director,*
*Office of the Federal Register.*

*July 1, 1982.*

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# THIS TITLE

Title 31—MONEY AND FINANCE: TREASURY is composed of two volumes. The parts in these volumes are arranged in the following order: Parts 0 to 199, and Part 200 to end. The contents of these volumes represents all of the current regulations codified under this title of the CFR as of July 1, 1982.

For this volume, Gary J. Bruegging was Chief Editor, assisted by Donna L. Rickett. The Code of Federal Regualtions publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

# Title 31—Money and Finance: Treasury

(This book contains Parts 0 to 199)

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*Part*

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NOTE: Other regulations issued by Department of the Treasury appear in Title 12, Chapter I; Title 19, Chapter I; Title 26, Chapter I; Title 27, Chapter I; Title 41, Chapter 10.

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CROSS REFERENCE: General Accounting Office: See 4 CFR Chapter I.

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AUTHORITY: E.O. 11222, May 8, 1965; 18 U.S.C. 201 note; 5 CFR 735.104.

SOURCE: 35 FR 19056, Dec. 16, 1970, unless otherwise noted.

## Subpart A—Regular Employees

### GENERAL PROVISIONS

**§ 0.735-1 Purpose.**

This part describes the standards of conduct required of all employees of the Treasury Department. The regulations in this part implement Civil Service Commission regulations (5 CFR Part 735) issued on October 1, 1965, in accordance with Executive Order 11222. The standards of conduct in this part are not to be considered all-inclusive and may be supplemented by bureaus to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Department does not mean that such an act is condoned, is permissible or would not call for and result in corrective or disciplinary action.

**§ 0.735-2 Scope.**

This part covers three general types of employment situations as follows:

(a) Subpart A of this part sets the general policy and defines rules of conduct and procedures for all regular employees.

(b) Subpart B of this part applies to special Government employees, primarily advisers and consultants.

(c) Subpart C of this part sets forth additional rules and guide lines applicable to employees stationed in foreign countries.

**§ 0.735-3 Policy.**

(a) Executive Order 11222 of May 8, 1965, 18 U.S.C. 201 note, states the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

(b) Personnel of the Treasury Department are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Department's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high standards of conduct necessary in the transaction of Treasury activities. Those few employees who violate the laws or the rules or regulations on conduct in this part will be disciplined in accordance with the gravity of the offenses committed.

(c) Disciplinary action may be in addition to any penalty prescribed by law. If disciplinary or other remedial action is necessary, it will be taken only after consideration of the explanation of the employee and will be effected in accordance with applicable laws and regulations. Remedial action may include, but is not limited to:

(1) Changes in assigned duties.

(2) Disqualification for a particular assignment.

(3) Divestment by the employee of his conflicting interest.

(4) Disciplinary action.

### § 0.735-4 Definitions.

In this part:

(a) "Regular employee" or "employee" means an officer or employee of the Treasury Department, but does not include a special Government employee.

(b) "Special Government employee" means an officer or employee of the Treasury Department who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(c) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

## CONFLICTS OF INTEREST

### § 0.735-20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is real or only apparent. The rules of the Treasury Department concerning conflicts of interest appear in §§ 0.735-33, 0.735-35, 0.735-36, and 0.735-38.

### § 0.735-21 Summary of provisions of criminal code.

The following is a brief summary of the provisions of the criminal code, 18 U.S.C., effective January 21, 1963, which define the conflicts of interest which are subject to fine and imprisonment. These provisions have been interpreted by the Attorney General in a memorandum distributed to Heads of Departments and Agencies, dated January 28, 1963, 28 FR 985 and published in a note following 18 U.S.C. 201. It should be noted that lesser prohibitions apply to special Government employees than to regular employees as indicated in Subpart B of this part.

(a) *Section 203.* Section 203 prohibits an employee from receiving, agreeing to receive or asking for, directly or indirectly, any compensation for services, otherwise than as provided by law, rendered by himself or another in relation to any matter in which the United States is a party or has a substantial interest before any Department or agency.

(b) *Section 205.* Section 205 prohibits an employee from (1) acting as an agent or attorney in prosecuting any claim against the United States or receiving any share of interest in such claim for assistance in its prosecution, or (2) acting as agent or attorney for anyone before any Department or agency in connection with any particular matter in which the United States is a party or has a direct and substantial interest. This section does not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his parents, spouse, child or any person for whom, or for any estate for which he is serving as guardian or other fiduciary, with certain exceptions set forth in that section. The provisions of this section and section 203 do not prevent an employly supporting or advocating the violent overthrow of our constitutional form of government (5 U.S.C. 7532 and E.O. 10450, as amended).

### § 0.735-31 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311).

### § 0.735-32 Gifts or gratuities from Government employees.

Employees of the Federal Government are prohibited from soliciting contributions from other employees for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary than themselves (5 U.S.C. 7351). Collections of spontaneous origin may be made for token gifts upon retirement or resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he has worked. In no case should general solicitations be made for a gift, nor should gifts to the recipients be in cash, except that small amounts (e.g. under $10) remaining after the purchase of a gift may be included with the gift. However, a collection, within the foregoing limitations, may be made for a token gift to express felicitation to an employee and, with the approval of his supervisor, for a cash gift to assist in a catastrophic illness or disaster, provided that these collections are limited to coworkers of approximately equal status to the recipient employee, and to his immediate supervisors.

### § 0.735-33 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department,

(2) Conducts operations or activities that are regulated by the Treasury Department, or

(3) Has interests that may be substantially affected by the performance or non-performance of his official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by heads of bureaus:

(1) Acceptance of gifts, entertainment, and food is acceptable when the circumstances make it clear that obvious family or personal relationships (such as those between the parents, children or spouse of the employee and the employee) rather than the business of the persons concerned are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance. This exception also applies when Treasury officials are in attendance at large organized functions which have traditionally been considered appropriate and important ones to attend because of the recognized benefit of such attendance to Treasury operations.

(3) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law.

(4) Employees may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) The receipt of payment or reimbursement, by outside sources, for the expenses of travel and subsistence for activities related to Government employment is permitted only in accordance with § 0.735-39.

### § 0.735-34 Gifts or gratuities from foreign governments.

The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

### § 0.735-35 Outside financial interests.

An employee shall not participate on a private basis, directly or indirectly, in any financial transaction as a result of, or primarily relying on, information obtained through his employment with the Treasury Department; or if in the transaction his private interest is, or may reasonably be expected to be, in conflict with his official interests or duties.

### § 0.735-36 Using official designation.

Employees shall not permit their official position, status or designation to be used in a manner that is intended to further, or gives the appearance of furthering, the private business interests of the user.

### § 0.735-37 Purchase of Government property.

Employees are prohibited from, either directly or indirectly, bidding or purchasing at any sale of Government property under the direction or incident to the functions of the bureaus or offices in which they are employed. Government property under the control of the Treasury Department shall not be sold to a Government employee, either directly or indirectly, unless a properly authorized representative of the bureau or office disposing of the property has determined that the sale is in the best interest of the Government. Before purchasing any Government property from any agency of the Government, either directly or indirectly, employees of the Treasury Department shall make known to the disposing agency that they are such employees and shall be governed by the disposing agency's rules relating to sales to Government employees (Treasury Order 19, Rev. No. 1, May 26, 1955).

### § 0.735-38 Outside employment and other outside activities.

Employees shall not engage in any outside employment or other outside activities, with or without compensation, which (a) interfere with the efficient performance of official duties, (b) might bring discredit on or cause unfavorable and justifiable criticism of the Government or (c) might reasonably result in a conflict of interest, or an apparent conflict of interest, with official duties and responsibilities. Bureau heads will establish appropriate instructions to meet their peculiar needs in regard to outside employment and other outside activities of their employees. These instructions will require employees to obtain written permission from appropriate approving officials. To simplify administration of this rule, bureaus may include in their instructions criteria not inconsistent with the regulations in this part which provide for outside activities which are clearly permissible and would normally not require written permission.

### § 0.735-39 Teaching, writing, lecturing, and speechmaking.

(a) Employees may teach, write, lecture, or deliver speeches providing such action is not prohibited by law, Executive Order 11222, 5 CFR Part 735, or the regulations in this part. The requirements prescribed in § 0.735-38 also apply to engagements to teach, write, lecture, or deliver speeches. However, an employee shall not, either with or without compensation, engage in teaching, writing, lecturing, or speechmaking (including teaching, writing, lecturing, or speechmaking, for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service) that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when an appropriate approving official gives written authorization for use of nonpublic information on the basis that the use is in the public interest. A formal speech, a lecture, or an article relating to Treasury Department business shall, prior to its release to the public, be submitted to the appropriate approving official and, in the Office of the Secretary, the Assistant Secretary (Public Affairs).

(b)(1) *Determinations by the appropriate approving official.* If the subject matter of any teaching, writing, lecturing, or speechmaking activity is devoted to the responsibilities, programs, or activities of the Department, or draws upon official data or ideas which have not been made public, the appropriate approving official will determine whether the activity may be undertaken, and if so, whether as official duty or in a private capacity. In determining whether the activity is an official duty or private undertaking, the appropriate approving official will consider, among other factors, whether the activity will be performed during official hours, whether Government time or facilities will be utilized, whether the official title of the employee will be used, and whether the activity would justify the expenditure of public funds.

(2) *Activities undertaken as an official duty.* If the activity is undertaken as an official duty, all expenses will be borne by the Treasury Department, and the employee may not accept any honorarium or other compensation or permit payment of his or her expenses. However, under 5 U.S.C. 4111 and 5 CFR Part 410, an employee on official duty may accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Department's policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities.

(3) *Activities undertaken in a private capacity.* (i) The Treasury Department discourages employees from receiving honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Treasury business, even though the activity is not performed as an official duty. An employee may not receive any such compensation unless, before engaging in the activity, a written request is submitted to and approved by the appropriate approving official. The request should set forth the facts relating to the amount of compensation, its reasonableness (taking into account the amount of compensation paid to others under similar circumstances), and also indicate why its acceptance would be consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the employee's official duties and responsibilities. Presidential appointees shall obtain the personal written approval of the Secretary before engaging in any such activity for compensation.

(ii) Employees may accept payment from the person or group sponsoring an activity determined not to be an official duty for travel, lodging, and subsistence expenses actually incurred, if the payment is reasonable in amount and otherwise consistent with the Department's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee. Presidential appointees shall obtain the personal written approval of the Deputy Secretary or Secretary before accepting any such payment.

(4) *Excess expenses.* Nothing in paragraphs(b)(2) or subsection (b) (3) (ii) of this section prohibits an employee from incurring expenses, in connection with the activity, that are not reimbursable under that subsection. However, payment or reimbursement of such excess expenses shall not be accepted or permitted, except by a person who: (i) Is a relative or close personal friend, and (ii) makes such payment solely from personal funds. Any payment or reimbursement under this subsection shall be subject to the rules of this part pertaining to gifts and gratuities.

(5) *Reporting requirements.* All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs or activities of the Department or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the appropriate approving official stating the amounts paid and by whom, unless this information was

previously provided to that official. In addition, the employee may be required by the appropriate approving official to furnish other relevant information concerning these payments.

(6) *Other restrictions.* (i) Under 5 CFR 735.203(c), the Secretary of the Treasury may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Treasury Department, or which draws substantially on official data or ideas which have not been made public.

(ii) Under 46 Comp. Gen. 689 (1967), no reimbursement or donation may be made to the Treasury Department to cover the expenses of travel and subsistence of an employee on official business, unless specifically authorized by law.

(iii) Under 2 U.S.C. 441i, appointed officials are prohibited from receiving honorariums of more than $2,000 for any appearance, speech, or article, and from receiving honorariums aggregating more than $25,000 in any calendar year.

(c) For purposes of this section, the "appropriate approving official" shall be in the case of employees within a bureau, the bureau head or deputy; in the case of employees within an office, the office head or deputy; and in the case of a bureau or office head, the official who directly supervises the bureau or office head to whom such official reports pursuant to Treasury Department Order No. 190.

(d) Treasury officials are prohibited from official attendance at segregated meetings. They should not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, from any of the facilities, or the conferences or from membership in the group. These prohibitions also apply to other Treasury employees, except where the meeting is undertaken primarily for the benefit of the Government and not for the entertainment or benefit of the particular group or audience. For purposes of this paragraph, the term "Treasury officials" refers to all Presidential and Schedule C appointees, all chiefs and deputy chiefs of bureaus and of offices in the Office of the Secretary, all career assistant secretaries and deputy assistant secretaries and the chief officers of a regional, State, or district organization or other field office, except for district law enforcement offices consisting of 10 employees or less. (For a more detailed interpretation of this policy, see Administrative Circular 109 and supplements thereto.)

[35 FR 19056, Dec. 16, 1970, as amended at 43 FR 17471, Apr. 25, 1978]

### § 0.735-40 Soliciting aid or advertising for organizations or associations of Treasury employees.

Employees shall not solicit financial aid from or sell tickets to persons outside the Federal Government for the benefit of any organization or association comprised of Treasury Department employees. No publication of any such organization shall contain any commercial advertising, and the costs of such publications must be wholly paid by the organization or association (Treasury Order 17, May 29, 1937). Employee organizations and associations may, however, accept financial aid for convention purposes from Boards of Trade, Chambers of Commerce, Convention Bureaus and other such organizations serving similar purposes which have followed a regular practice of furnishing financial aid to organizations which hold conventions.

### § 0.735-41 Gambling, betting, and lotteries.

(a) An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any form of gambling, betting, lotteries or the sending of chain letters, even if such activities are in support of a worthy cause. However, this section does not preclude activities necessitated by an employee's law enforcement duties. (See §§ 91.7, 407.7 and 605.7 of this title.)

(b) Possession on Government-owned or leased premises of any numbers slip or ticket, record, notation, receipt, or other writing of a type ordinarily used in any illegal form of gambling such as a tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facie evidence that the employee is participating in an illegal form of gambling on such premises.

### § 0.735-42 Use of intoxicants.

Employees must refrain from using intoxicants habitually to excess or in any way which adversely affects their work performance (5 U.S.C. 7352).

[36 FR 6828, Apr. 9, 1971]

### § 0.735-43 Indebtedness.

Employees shall not without good reason fail to maintain good credit and a reputation for prompt settlement of their just financial obligations in a proper and timely manner. They are expected to manage their private financial affairs in a manner which will not cause embarrassment to the Treasury Department. This particularly includes just financial obligations to Federal, State, and local governments for taxes as well as private concerns and individuals. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in the case of taxes, a final administrative determination confirmed by notice of a tax lien issued by a governmental agency, Federal, State, or local. "In a proper and timely manner," as used in this section, means in a manner which the Treasury Department determines does not, under the circumstances, reflect adversely on the Department as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

### § 0.735-44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove or conceal, alter, mutilate, obliterate or destroy records or documents or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly sent to file when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements. There are specific instructions relating to the safeguarding of classified information which are furnished to employees authorized to have access to such information. See further the regulations in Part 1 of this title which implement 5 U.S.C. 301 and 552 and which govern the care and the disclosure of records in the Treasury Department, and see the relevant regulations, if any, issued by a bureau or office to which the record belongs.

### § 0.735-45 Lending or borrowing money.

Employees shall not, either directly or indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Treasury employee who is under his supervision.

### § 0.735-46 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 638a.

### § 0.735-47 Disclosure of information to the public.

Employees may not disclose official information without either appropriate general or specific authority under Department or bureau regulations. See further 31 CFR 1.8 and 1.9.

### § 0.735–48 Giving testimony.

When directed to do so by competent Treasury authority, employees must testify or respond to questions (under oath when required) concerning matters of official interest. See further 31 CFR 1.10.

### § 0.735–49 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to essential need. Employees who receive personal mail at their office will advise addressors to stop sending such mail to the Treasury Department address.

### § 0.735–50 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. They also have a positive responsibility to protect and conserve all Federal property including equipment and supplies, which is entrusted or issued to them.

### § 0.735–50a Conduct in and on Treasury buildings and grounds.

Employees must adhere to the regulations governing conduct in and on the Treasury Building, and Treasury Annex Building, and grounds (Part 407 of this title); the Bureau of Engraving and Printing Building, and Bureau of Engraving and Printing Annex Building, and grounds (Part 605 of this title); and the Bureau of the Mint buildings and grounds located in Denver, Fort Knox, New York, Philadelphia, San Francisco, and West Point (Part 91 of this title); and Treasury occupied General Services Administration buildings and grounds (41 CFR Subpart 101–19.3).

### § 0.735–51 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money or property (as, for example, through sending telegrams or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Treasury Department (18 U.S.C. 1913); or to the rights of employees to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7102).

### § 0.735–52 Soliciting, selling, and canvassing.

Except when authorized by the head of the bureau, office or division concerned, and except as provided by § 0.735–32, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article or from distributing literature or advertising matter in any space occupied by Treasury.

### § 0.735–53 Civil Service examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Civil Service statutory provisions, 5 U.S.C. Chapter 33 and the Civil Service regulations. Employees shall not participate, either directly or indirectly, in any of the following actions: (a) Intentionally make a false statement or practice any deception or fraud in examination or appointment, (b) induce persons to withdraw from competition for competitive service positions, (c) engage in any improper activity with respect to the taking of Civil Service examinations and examination ratings, and (d) obstruct the right of any person to take examinations according to the Civil Service rules and regulations.

### § 0.735–54 Falsification of official records.

Employees shall avoid making false, misleading or ambiguous statements, deliberately or willfully, whether verbal or written, in connection with any matter of official interest. Some of these matters of official interest are: Transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel actions; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States (18 U.S.C. 1001).

### § 0.735–55 Miscellaneous statutory provisions.

Bureau heads should advise employees of any laws which relate specifically to employees in their bureaus. The attention of every employee is directed to the statutes relating to conduct listed below:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(b) The prohibition placed on Treasury Department employees against carrying on any trade in any public funds or debts or obtaining any personal gain from transacting the Department's business (31 U.S.C. 1018).

(c) Chapter 11 of Title 18, U.S.C. relating to bribery, graft, and conflicts of interest as appropriate to the employees concerned.

(d) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(e) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(f) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643) and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibitions against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(j) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(k) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(l) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS-16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from, a private foundation.

(m) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

### § 0.735–56 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

## STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

### § 0.735–70 Employees required to submit statements.

Except as provided in § 0.735–71 statements of employment and financial interests will be filed by the following employees:

(a) Those paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code.

(b) Those classified at GS-13 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions, specifically identified in Appendix A to this part, the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) Those classified at GS-13 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions, specifically identified in Appendix A to this part, which the Secretary of the Treasury has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order, 5 CFR Part 735, and this part.

(d) Those classified below GS-13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (b) and (c) of this section, but only when the inclusion of the positions in Appendix A to this part has been specifically justified by the Secretary of the Treasury in writing to the Civil Service Commission as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

(e) Alterations to, deletions from, and other amendments of the list of positions in Appendix A to this part may be made under the criteria in paragraphs (b) through (d) of this section and are effective upon approval by the Secretary of the Treasury and actual notification to the incumbents. Amendments to the list in Appendix A of this part shall be submitted annually for publication in the FEDERAL REGISTER.

### § 0.735–70a Employee's complaint on filing requirement.

Employees shall have, in conformity with the grievance procedures prescribed in Treasury Personnel Manual Chapter 771-4 and the grievance procedures of the bureau or office in which the particular employee is employed, an opportunity for review of a complaint that his position has been improperly included in Appendix A of this part as one requiring the submission of a statement of employment and financial interests.

### § 0.735–71 Exceptions.

(a) Employees in positions that meet the criteria in paragraph (b) of § 0.735–70 may be excluded from the reporting requirement when the Secretary of the Treasury determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by this part when the employee is required to report to the Chairman of the Civil Service Commission under section 401 of Executive Order 11222.

### § 0.735–73 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Civil Service Commission in the Federal Personnel Manual. Such statements shall not include questions that go beyond, or are in greater detail than, those included in the Commission's formats without the approval of the Commission.

### § 0.735–74 Time and place for submission of employees' statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the office or official designated by the bureau head not later than:

(a) Ninety days after the effective date of the regulations in this part (April 16, 1966) if employed on or before that effective date; or

(b) Thirty days after his entrance on duty but not earlier than 90 days after the effective date of the regulations in this part if appointed after that effective date (April 16, 1966).

### § 0.735–75 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when the Civil Service Commission authorizes a different date. If no changes or additions occur, a negative report is required, and the notation "no change" should be made on the form. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of 18 U.S.C. 208, or Subpart B of 5 CFR Part 735 or this part.

### § 0.735–76 Interests of employees' relatives.

For purposes of completing the statements of employment and financial interests, the interest of a spouse, minor child, or other member of the employee's immediate household is to be considered an interest of the employee. In other words, those blood relations who are residents of the employee's household are to be treated for purposes of completing the financial statement as though they were the employee and therefore, the report of financial statements should reflect their employment and financial interests in the same manner that the employment and financial interests of the employee are shown.

### § 0.735–77 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or a supplementary statement including holdings placed in trust is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his behalf.

### § 0.735–78 Information excluded.

The regulations in this part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

### § 0.735–79 Review of statements.

Presidential appointees who are heads of bureaus and those in the Office of the Secretary will file their statements with the General Counsel for his review. The General Counsel's statement will be filed with the Secretary. Heads of bureaus and their principal assistants or deputies who are not Presidential appointees will file their statements with the official in the Office of the Secretary to whom they report under Treasury Order 190, as revised. In a similar manner, financial statements of all Presidential appointees below the level of bureau head will be forwarded through the bureau head to the official in the Office of the Secretary to whom the bureau head reports. Each bureau will make provisions for a review of the statements submitted by other employees. This review may be made either by the bureau head or his designee. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest or an apparent conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. If the conflict or apparent conflict is not resolved at bureau or lower organizational level, the matter will be referred to the General Counsel who may refer it to the Advisory Committee on Ethical Standards. He shall report all cases formally referred to him to the Secretary.

### § 0.735–80 Confidentiality of employees' statements.

Statements of employment and financial interests, and supplementary statements shall be held in confidence. To insure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as the Civil Service Commission or the Secretary of the Treasury may determine for good cause shown.

### § 0.735–81 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees under the regulations in this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in the matter in which his or the other person's participation is prohibited by law, order, or regulation.

## RESPONSIBILITIES

### § 0.735–90 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this part is described below in §§ 0.735-91–0.735-97.

### § 0.735–91 Department.

The Department's responsibilities are to (a) issue policy and basic standards of conduct applicable to all Treasury employees, (b) periodically review the basic standards issued and to review initially and periodically those additional standards issued by the bureaus, (c) set requirements to insure that supervisors and employees are aware of the standards of conduct, of their responsibilities in maintaining and adhering to those standards and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them, and (d) establish procedures for furnishing advice to management and to employees on the application of standards of conduct. These procedures involve the establishment of an Advisory Committee on Ethical Standards and the referral to the Advisory Committee of problems relating to bureau heads and officials who report directly to the Secretary. Problems relating to all other employees on which advice or guidance is necessary or desirable may also be referred to the Committee through personnel or legal channels.

### § 0.735–92 The Department's Counselor.

The General Counsel has been designated by the Secretary as the Counselor for the Department on matters covered by the regulations in this part. He is responsible for coordination of the counseling service within the Department and for interpretations on questions of conflicts of interest and other matters under this part. He shall report matters formally referred to him to the Secretary.

### § 0.735–93 Deputy Counselors.

The Chief Counsel or legal advisor for each bureau is the Deputy Counselor for that bureau. As such, his responsibility is to give authoritative advice and guidance on conflicts of interest and other matters covered by this part.

### § 0.735–94 Role of personnel officers.

Personnel officers at all organizational levels are responsible for providing general guidance and assistance to supervisors and employees in implementing and adhering to the provisions of the regulations in this part. Where questions arise or where advice is sought by either supervisors or employees which involve either advice or interpretation which is legal in nature, personnel officers will be responsible for seeing that the advice or interpretation is sought or obtained from the Deputy Counselor or the Counselor, as appropriate.

### § 0.735-95 Bureaus.

The responsibilities of the bureaus are to (a) provide employees with basic standards of conduct and any additional standards and explanations necessary to effectively carry out the policy of the President and of the Department, (b) see that employees and supervisors are aware of their responsibilities in maintaining and adhering to established standards of conduct, (c) inform employees as to how and from whom they may get additional clarification of standards of conduct and related laws, rules, and regulations, (d) advise employees of the location or availability of regulations governing conduct in and on Treasury buildings and grounds (§ 0.735-50a), (e) insure that appropriate disciplinary action is taken against employees who violate standards of conduct and related laws, rules and regulations and against supervisors who fail to carry out their responsibilities in taking or recommending disciplinary action when appropriate against employees under them who have committed such offenses, and (f) review and evaluate the effectiveness of standards issued and their application.

NOTE: Bureaus shall provide employees with copies of the regulations in this part. New employees shall be given copies of the regulations in this part at the time of their employment. All employees will be reminded of the standards of conduct at least annually. This may be done by posting the standards on the bulletin board, by reminders in house organs or by other forms of written communication, including payroll inserts.

### § 0.735-96 Supervisor.

It is the responsibility of each supervisor to (a) know the standards of conduct applicable to him and the employees under his supervision, (b) advise the employees under his supervision or help them obtain advice on the application of the standards of conduct, (c) adhere to them, (d) see that the employees under his supervision know and adhere to them also, and (e) take or recommend disciplinary action when appropriate in cases where the employees under his supervision violate the standards or the principles upon which they are based.

### § 0.735-97 Employees.

Each employee in the Department is required to (a) know the standards of conduct and their application in his case, (b) seek information from his supervisor in case of doubt or misunderstanding on the application of the standards of conduct, (c) adhere to the standards of conduct, and (d) be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

## LISTING OF EMPLOYEES WHO MUST FILE STATEMENTS

### § 0.735-100 Listing of employees.

Appendix A to this part is a listing of specific employees who must file statements. Bureau heads shall review the list of positions in Appendix A to this part on an annual basis and submit changes as appropriate. The effective date of any change is set by § 0.735-70(e).

## Subpart B—Preventing Conflicts of Interest on the Part of Special Government Employees in the Department

## GENERAL PROVISIONS

### § 0.735-200 Purpose.

This subpart implements the provisions of Executive Order 11222 dated May 8, 1965, relating to special Government employees in the Treasury Department.

### § 0.735-201 Scope.

This subpart relates basically to special Government employees who are consultants and advisers, including experts. Submission of financial statements by special Government employees other than advisers, consultants, and experts is waived except where statements would otherwise be required under § 0.735-70. Employees who are employed for more than 130 days are treated as regular employees and are subject to the provisions of Subpart A of this part.

### § 0.735–202 Policy.

It is the Department's policy in issuing the instructions in this part to adhere rigidly to the policy set forth by the President that every citizen is entitled to have complete confidence in the integrity of his Government and that each individual officer, employee or adviser of the Government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

## GENERAL RULES OF CONDUCT APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES

### § 0.735–203 Applicability of Subpart A of this part.

Special Government employees shall familiarize themselves with the rules of conduct contained in Subpart A of this part so they can be guided by the principles contained in those rules insofar as their employment with the Treasury is concerned. In addition, the rules of conduct in §§ 0.735-204—0.735-209 specifically apply to them.

### § 0.735–204 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

### § 0.735–205 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. "Inside information" as used in this section means information obtained under Government authority which has not become part of the body of public information.

### § 0.735–206 Teaching, lecturing, and writing.

Special Government employees may teach, lecture, or write providing such action is not prohibited by law, Executive Order 11222, or the regulations in this part. However, a special Government employee shall not, either with or without compensation, engage in teaching, lecturing, or writing that is dependent upon information obtained as a result of his employment with the Department, except when that information has been made available to the general public or will be made available on request, or when the official to whom he reports receives written authorization from the Secretary or the Advisory Committee for the Secretary for the use of non-public information on the basis that the use is in the public interest.

### § 0.735–207 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business or financial ties.

### § 0.735–208 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with the Treasury Department anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Department.

### § 0.735–209 Miscellaneous statutory provisions.

The statutory provisions relating to Treasury employees referred to in

§§ 0.735-30a, 0.735-31, 0.735-32, 0.735-34, 0.735-42, 0.735-44, 0.735-46, 0.735-51, 0.735-53, 0.735-54, and 0.735-55 apply to special Government employees when serving in their official capacities with the Department. Where there are specific statutes applicable to employees in certain Treasury bureaus, the bureau concerned should inform its special Government employees of the applicability of those statutes to them.

## CONFLICT OF INTEREST STATUTES

### § 0.735-210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees; i.e., those who are appointed for more than 130 days a year. These two sections in general operate to preclude a regular Government employee, except in the discharge of his official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special Government employee:

(1) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he has at any time participated personally and substantially in the course of his Government employment.

(2) He may not, except in the discharge of his official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he serves. However, this restraint is not applicable if he has served the agency no more than 60 days during the past 365. He is bound by the restraint, if applicable, regardless of whether the matter is one in which he has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when he does not serve the Government as well as on the days when he does.

(c) The rules to be followed in the Treasury Department to determine the duration of employment of special Government employees and other temporary employees in order to ascertain the application of these statutes are set forth in Personnel Bulletin No. 70-42.

(d) An employee who undertakes service with the Treasury Departmeft and another department or agency shall inform each of his arrangements with the other.

(e) There may be situations where a consultant or adviser has a responsible position with his regular employer which requires him to participate personally in contract negotiations with the Treasury. In this situation, the consultant or adviser should participate in the negotiations for his employer only with the knowledge of a responsible Treasury official; i.e., the full-time official to whom the consultant or adviser reports. Prior to permitting such participation, the responsible Treasury official shall obtain the approval in writing of the Advisory Committee.

(f) Section 205 of Title 18, U.S. Code, contains certain exemptive provisions. The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his performance of work under a grant or contract for which he would otherwise be disqualified because he had participated in the matter for the Government or it is pending in an agency he has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205 of Title 18, U.S. Code, to allow a special Government employee to represent before such department or agency either his regular employer or another person or organization in the performance of work under a grant or contract. The action required to effect the exemption is a certification by the Secretary to be submitted for publication in the FEDERAL REGISTER. Such certifications will be forwarded to the Secretary through the General Counsel, and the exemption will not take effect until the certification is published.

(g) The other exemptive provision requiring action permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate he serves as a fiduciary, but only if he has the approval of the official responsible for appointments to his position and the matter involved is neither one in which he has participated personally or substantially nor one under his official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. In the Treasury Department, the "official responsible for appointments" for these purposes will be the bureau head for purposes of those appointed as consultants and advisers in bureaus, or the person to whom the appointee reports for purposes of those appointed as consultants or advisers in the Office of the Secretary.

### § 0.735-211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18, U.S. Code applies to individuals who have left Government service, including former special Government employees. It prevents a former employee or special Government employee from representing another person in connection with certain matters in which he participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207 of Title 18, U.S. Code, prevents a former employee or special Government employee, for a period of 1 year after his employment has ceased, from appearing personally for another person in such matters before a court, department, or agency if the matters were within the area of his official responsibility at any time during the last year of his Government service. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) For the purposes of section 207 of Title 18, U.S. Code, the employment of a special Government employee ceases on the day his appointment expires or is otherwise terminated, as distinguished from the day on which he last performs service. Accordingly, the appointment of an adviser or consultant should be terminated promptly as soon as it is determined that his services are no longer required.

### § 0.735-212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18, U.S. Code, bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents an employee or special Government employee from participating as such in a particular matter in which, to his knowledge, he, his spouse, minor child, partner, or a profit or nonprofit enterprise with which he is connected has a financial interest. However, the section permits such an employee's agency to grant him an ad hoc exemption if the interest is not so substantial as to affect the integrity of his services. Insignificant interests may also be waived by a general rule or regulation.

(b) The matters in which special Government employees are disqualified by section 208 of Title 18, U.S. Code, are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207 of Title 18, U.S. Code. Section 208, therefore, undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also where the financial interests involved are minimal in value.

(c) Exemptions under section 208 of Title 18, U.S. Code may be made by general rule or regulation by the Secretary. Ad hoc exemptions may be made by the Secretary, the Under Secretary and the Under Secretary for Monetary Affairs, or upon obtaining the approval of the Advisory Committee on Ethical Standards, by other officials in the Office of the Secretary and by bureau heads to whom advisers and consultants report.

## CONSULTANTS AND ADVISERS

### § 0.735-220 Advice on rules of conduct and conflict of interest statutes.

If a special Government employee who is a consultant or adviser has doubt as to the ethics of any conduct falling within the standards of conduct and conflict of interest statutes, he should confer with the Chief Counsel of the bureau in which he is serving or the General Counsel of the Department if he is serving in the Office of the Secretary. The Chief Counsel of any bureau may refer doubtful questions to the General Counsel. Questions of ethical judgment may be referred to the Advisory Committee on Ethical Standards by the General Counsel.

### § 0.735-221 Industry, labor, agricultural, and other representatives.

There are situations where a consultant or adviser or member of an advisory committee may be providing advice as a representative of an outside group and not as an employee or special Government employee of the Department. Such questions normally arise with respect to members of advisory committees within the departments. Some advisory committees are clearly composed of representatives of industries. The Attorney General has ruled that the Advisory Group to the Commissioner of Internal Revenue is composed of persons serving in a representative capacity. Bureaus or offices using advisory committees may seek the advice of the Chief Counsel, or through him, the General Counsel, to determine whether members of any given advisory committee are serving in a representative capacity and not as employees of the Department. Persons serving in a representative capacity are not subject to the conflict of interest laws, but they should nonetheless be guided by the considerations in this part covering such points as use of inside information, abuse of office and gifts.

### § 0.735-222 Responsibility of the individual special Government employee.

Each person appointed as a special Government employee in the Treasury Department is responsible for:

(a) Familiarizing himself with the contents of this part and the applicability of the conflict of interest statutes in his particular case.

(b) Seeking advice and assistance in interpreting the laws and instructions in case he has any questions concerning them.

(c) Being alert to the possibility of conflicts of interest.

(d) Furnishing the Department with information concerning his financial interests and keeping this information current.

## PROCEDURES TO BE FOLLOWED IN THE DEPARTMENT

### § 0.735-230 Information and assistance to special Government employees and their supervisors.

Each special Government employee appointed in the Department and each supervisor of a special Government employee will be given a copy of this part and will be required to familiarize himself with the conflict of interest laws and the provisions of the instructions applicable to him. If a special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, he will be referred to the Chief Counsel or General Counsel. Either of the latter may refer questions of ethical judgment to the Advisory Committee on Ethical Standards. The committee is identified in Treasury Order No. 215.

### § 0.735-231 Disclosure of financial interests.

(a) In order to carry out its responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, at the time of initial employment and each reappointment thereafter each special Government employee who is a consultant or adviser will be required to supply a statement of (1) all other employment and (2) the financial interests of the special Government employee which the head of the bureau or office in which he serves determines are relevant in the light of the duties he is to perform, including, but not limited to, the name of companies in which he has a significant financial interest, and the nature of such financial interest. Each statement of financial interests will be forwarded to the General Counsel through the Advisory Committee on Ethical Standards along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The supervisor of the special Government employee should review the statement of employment and financial interests in relationship to the duties to be performed and initially determine that no conflict of interest exists prior to submission of the material to the Advisory Committee. Accordingly, such statements must be kept current during the period the special Government employee is on the Government rolls. Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement to be furnished 6 months after the date of employment. If no changes or additions occur, a negative report is required, and the notation "no change" should be made on the form.

(c) The Department official or bureau head appointing a member of an advisory board or committee to serve in an individual rather than a representative capacity, may (1) waive disclosure of financial information when he considers that such information is not relevant to the advisory duties of the board or committee, or (2) waive disclosure of financial information except that which is relevant to the advisory duties of such board or committee. Such waiver or partial waiver is for the convenience of the Department and shall in no instance be considered a substitute for the exemption procedures described under "Applicability of 18 U.S.C. 208" in this subpart. If the official or bureau head elects to waive or partially waive disclosure of information as described in this paragraph rather than obtain complete disclosure of financial information, he must report in writing to the General Counsel through the Advisory Committee the names of the persons to whom waivers were granted and the specific reasons for the waivers. In cases of doubt as to which of the three actions is appropriate, he should obtain advice from the Advisory Committee.

### § 0.735-232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he will be required to inform the Department and each of the agencies of his arrangements with the others so that appropriate administrative measures may be effected. Information of service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Treasury Department.

### § 0.735-233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported to the General Counsel, who in turn will report to the Secretary. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

### § 0.735–234 Disciplinary and other remedial action.

A violation of the regulations in this part may be cause for appropriate remedial action which may be in addition to any penalty prescribed by law. Remedial action may include, but is not limited to:

(a) Change in assigned duties;

(b) Disqualification for a particular assignment;

(c) Divestment by the special Government employee of his conflicting interest;

(d) Disciplinary action.

### § 0.735–235 Legal interpretation.

Whenever the General Counsel and the General Counsel of the Civil Service Commission believe that a substantial legal question is raised by the employment of a particular special Government employee as a consultant or adviser, the General Counsel will advise the Department of Justice, through the Office of Legal Counsel, in order to insure a consistent and authoritative interpretation of the law.

### § 0.735–236 Safeguard of information.

Statements of employment and financial interests, and supplementary statements shall be held in confidence. To insure this confidentiality, bureaus and offices shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as the Civil Service Commission or the Secretary of the Treasury may determine for good cause shown.

## Subpart C—Additional Rules and Guidelines Applicable to Employees Stationed in Foreign Countries

### GENERAL PROVISIONS

### § 0.735–300 Purpose.

This subpart sets forth additional rules and guidelines applicable to employees and special Government employees stationed in foreign countries.

### § 0.735–301 Policy.

Treasury employees and special Government employees on official duty in foreign countries are both representatives of the Treasury Department and the United States Government and guests of the country in which they serve. This subpart is intended simply to emphasize these points.

### § 0.735–302 General provisions governing conduct in foreign countries.

Treasury employees and special Government employees should familiarize themselves with the standards of conduct for State Department personnel overseas and be guided accordingly. The most important provisions regarding conduct, not otherwise covered in this subpart, are contained in §§ 0.735–310–0.735–316. Since application of the standards may vary slightly in different countries due to local differences. Treasury employees and special Government employees should look to the State Department embassy for the country in which service is being performed for guidance, interpretation and assistance.

### SPECIFIC RULES OF CONDUCT

### § 0.735–310 Basic rule of conduct.

Treasury employees and special Government employees are obligated to obey the laws of the country in which they are assigned and to observe the rules of moral and courteous conduct in their official and personal lives.

### § 0.735–311 Applicability to American employees.

Each head of a Treasury organization overseas shall insure that all employees and special Government employees under his jurisdiction have read and are familiar with the provisions of this part.

### § 0.735–312 Applicability to members of families.

Restrictions placed on Treasury employees and special Government employees with respect to speeches, interviews and participation in activities abroad also shall apply to those members of the family of the employee and special Government employee who normally reside with him and are dependent on him. An employee or special Government employee shall be held to strict accountability for the actions of his family. Members of an employee's or special Government employee's family shall avoid expressing views which are unfriendly to or critical of the United States or the host country, their Governments, institutions, or people, either to or in the presence of persons of a foreign nationality. They shall, in addition, refrain from engaging in, or associating closely with, groups of people or organizations engaged in activities which are inimical to or embarrassing to the Government of the United States.

### § 0.735-313 Expression of thoughts and views.

Employees and special Government employees shall not allude in public speeches or newspaper interviews to disputes between governments or to active political issues in the United States or elsewhere, except with the authorization of the Department.

### § 0.735-314 Political activities.

Treasury employees and special Government employees shall not engage in any form of political activity in the country to which they are assigned. (This restriction does not apply to alien spouses who may continue to vote in their own countries.)

### § 0.735-315 Acceptance of employment by a member of a family.

Members of the family of a Treasury employee or special Government employee overseas shall not transact or be interested in any business or engage for profit in any profession in the country to which the employee or special Government employee is assigned without the approval of the bureau concerned. Bureaus may make certain exceptions to this with respect to employment for the U.S. Government.

### § 0.735-316 Sale of personal automobiles and other personal property.

The following provisions apply to all American employees and special Government employees regardless of agency, attached to United States embassies and constituent posts:

(a) The importation, sale or export of personal property including automobiles of American employees and special Government employees and their dependents must be in accordance with the laws, regulations and conventions of the host country.

(b) Personal property, including motor vehicles, brought to posts abroad by American employees and special Government employees must be for their bona fide personal use or that of their dependents, and not with intent of sale or transfer.

(c) Automobiles purchased for shipment to new posts of assignment should be unostentatious in appearance and modestly equipped.

(d) The employee or special Government employee will not be permitted to sell his personal property, including motor vehicles, at an amount in excess of the price he paid for it plus any taxes and customs paid by him, or for any valuable consideration in excess of the total of these amounts. However, an employee or special Government employee need not sell his personal property, including motor vehicles; he may export it, at his own or U.S. Government expense, under pertinent travel or shipping regulations. He must export it if required to do so by local law, local government regulation, or rules established by the ambassador.

(e) Full responsibility rests with the ambassador for controlling the importation and sale of personal property by all American employees or special Government employees attached to the embassy or constituent posts. He will issue and ensure compliance with local regulations consistent with policy prescribed herein and with other applicable regulations.

(f) Since conditions surrounding the importation and sale of personal property, including motor vehicles, vary widely country by country, Treasury must rely on the ambassador to issue detailed local regulations and procedures tailored to meet unique local situations. In issuing such local regulations and procedures consideration should be given to the following alternatives among others available to the ambassador. The ambassador may—

(1) Limit or prohibit importation of certain kinds of personal property. (For example, he may limit the number or frequency of motor vehicles imported.)

(2) Limit classes of persons to whom sales may be made. (For example, he may arrange for personal property sales to the host government, or to the U.S. Mission's commissary or employee association for use or rental by it.)

(3) Limit the conversion of currency realized from the sale of personal property.

(4) Require the exportation of personal property at Government or the employee's or special Government employee's expense under applicable travel or shipping regulations.

## ADVICE AND COUNSELING

### § 0.735-320 Responsibility for guidance and assistance.

Supervisors in charge of Treasury activities overseas are responsible for providing guidance and assistance to their employees and special Government employees regarding conduct in such overseas activities. In the event the supervisor in the overseas location needs assistance and guidance or interpretation, he should first look to the State Department representative in the overseas country. If that is not possible or if he needs further assistance he should contact his bureau head. Bureaus may refer questions on the regulations in this part to the Director of Personnel who will confer with the State Department where necessary to assure uniformity of interpretation and of conditions in overseas locations.

## APPENDIX A—IDENTIFICATION OF POSITIONS THE INCUMBENTS OF WHICH MUST FILE FINANCIAL STATEMENTS

### SPECIFIC POSITIONS

*Office of the Secretary*

All employees Grade 15 and above.

All employees Grades 13 and 14, Office of Domestic Gold and Silver Operations.

All contract and procurement personnel Grades 13 and 14, Office of Administrative Programs, and Office of Central Services.

*Office of the General Counsel*

All attorneys Grade 15 and above, except those in the Office of the Director of Practice.

*Bureau of Alcohol, Tobacco, and Firearms*

Director.
Deputy Director.
Assistant Director (Criminal Enforcement).
Deputy Assistant Director.
Chief, Special Programs Division.
Chief, Planning and Procedures Division.
Chief, Liaison and Technology Division.
Chief, Firearms and Explosives Division.
Chief, Alcohol Division.
Assistant Director (Inspection).
Deputy Assistant Director.
Regional Inspectors.
Assistant Director (Administration).
Chief, Administrative Programs Division.
All personnel, GS-13 and above who are involved in contract and procurement.
Assistant Director (Regulatory Enforcement).
Technical Advisor (Tobacco).
Deputy Director.
Chief, Industry Control Division.
Assistant Chief, Industry Control Division.
Chief, Regulations and Procedures Division.
Assistant Chief, Regulations and Procedures Division.
Chief, Trade and Consumer Affairs Division.
Assistant Chief, Trade and Consumer Affairs Division.
Assistant Director (Technical and Scientific Services).
Chief, Data Processing Division.
Chief, Technical Services Division.
Chief, Scientific Services Division.
Regional Directors.
Assistant Regional Directors.
Special Agents in Charge.
Assistant Special Agents in Charge.
Resident Agents.
Chief, Field Operations.
Area Supervisors.
Group Supervisors.
All Attorneys GS-15 and above.

*Office of the Comptroller of the Currency*

Deputy Comptroller of the Currency.
Chief National Bank Examiner.
Chief Counsel.
Deputy Chief Counsel.
Associate Chief Counsel.

Regional Counsel.

Administrative Assistant to the Comptroller.

Deputy Administrative Assistant to the Comptroller.

Special Assistant to the Comptroller.

Chief Representative in Trusts.

Assistant Chief National Bank Examiner.

Director, International Division.

Chief, Organization Division.

Regional Administrator of National Banks.

Deputy Regional Administrator of National Banks.

### *Bureau of Customs*

All employees, GS-15 and above.

Customs Law Specialists, GS-14.

Deputy Assistant Regional Commissioners of Customs (Classification and Value), (Inspection and Control), (Financial Management).

District Directors.

Assistant District Directors.

Special Agents in Charge.

Assistant and Deputy Special Agents in Charge.

Customs Attaches, GS-13 and above.

Senior Customs Representatives.

Resident Agents.

Senior Resident Agents.

Regional Directors and Assistant Regional Directors, Security and Audit.

Supervisory Import Specialist, GS-13 and above.

### *Bureau of Engraving and Printing*

Director, Bureau of Engraving and Printing.

Deputy Director.

Office Chiefs.

Employees in Grade GS-13 and above who are responsible for making a Government decision or taking a Government action in regard to contracting or procurement.

### *Bureau of Government Financial Operations*

All officials GS-16 and above.

Director, Domestic Banking Staff.

Director, Foreign Banking Staff.

Director, Division of Facilities Management.

Assistant Comptroller, Audit Staff.

Chief, Procurement Branch.

### *Internal Revenue Service*

All Staff Assistants in the Office of the Commissioner.

Assistant Commissioners.

Deputy Assistant Commissioners.

Office of Assistant Commissioner (ACTS).

Division Directors.

Associate Directors.

Assistant Division Directors.

Office of Assistant Commissioner (Administration).

Director, Facilities Management Division.

Office of Assistant Commissioner (Compliance).

Division Directors.

Assistant Division Directors.

Office of Assistant Commissioner (Planning and Research).

Director, Systems Development Division.

Office of Assistant Commissioner (Stabilization).

Division Directors.

Office of Assistant Commissioner (Technical).

Technical Advisers to the Assistant Commissioner.

Division Directors.

Assistant Division Directors.

Branch Chiefs.

Personnel at GS-13 and above who have authority to sign off on tax rulings.

Regional Commissioners.

Regional Inspectors.

Assistant Regional Commissioners of Accounts, Collection and Taxpayers Service; Appellate; Audit; Intelligence; and Stabilization.

Executive Assistants to the above Assistant Regional Commissioners.

District Directors.

Assistant District Directors.

Branch Chiefs, Assistant Branch Chiefs and Associate Branch Chiefs of Appellate in Branch Offices.

Contract and procurement personnel at GS-13 and above.

### *Bureau of the Mint*

Director of the Mint.

Deputy Director of the Mint.

Assistant Director for Administration.

Assistant Director for Technology.

Assistant Director for Production.

Assistant Director for Public Services.

Assistant Director for West Coast Operations.

Chief, Management and Organization Division.

Financial Manager and Assistant Financial Manager, Budget and Finance Division.

Contract Specialist.

General Attorney.

Superintendents and Assistant Superintendents, Philadelphia and Denver Mints and New York Assay Office.

Officers in Charge, San Francisco Assay Office and Fort Knox Bullion Depository.

Assistant Officer in Charge, San Francisco Assay Office.

All Presidential Appointments.

### *Bureau of the Public Debt*

Commissioner of Public Debt.

Deputy Commissioner of Public Debt.

Assistant Commissioner of Public Debt.
Chief Counsel.
Assistant Chief Counsel.

*U.S. Savings Bonds Division*

Chief, Office Services.

*U.S. Secret Service*

Assistant Director for Administration.
Deputy Assistant Director for Administration.
Chief, Financial Management Division.
Chief, Administrative Operations Division.
Legal Counsel.

[35 FR 19056, Dec. 16, 1970, as amended at 38 FR 972, Jan. 8, 1973; 39 FR 19470, June 3, 1974]

## APPENDIX B—CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

NOTE: Appendix B filed as part of the original document (April 16, 1966).

## APPENDIX C—STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS FOR SPECIAL GOVERNMENT EMPLOYEES

NOTE: Appendix C filed as part of the original document (April 16, 1966).

# PART 1—DISCLOSURE OF RECORDS

### Subpart A—Under 5 U.S.C. 552, as amended

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1.2 Information made available.
1.3 Publication in the FEDERAL REGISTER.
1.4 Public inspection and copying.
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APPENDIX B—INTERNAL REVENUE SERVICE.
APPENDIX C—UNITED STATES CUSTOMS SERVICE.
APPENDIX D—UNITED STATES SECRET SERVICE.
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APPENDIX A—OFFICE OF THE SECRETARY.
APPENDIX B—INTERNAL REVENUE SERVICE.
APPENDIX C—UNITED STATES CUSTOMS SERVICE.
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APPENDIX L—CONSOLIDATED FEDERAL LAW ENFORCEMENT TRAINING CENTER.

APPENDIX M—OFFICE OF THE ASSISTANT SECRETARY FOR TAX POLICY.

AUTHORITY: 5 U.S.C. 301, 552, as amended.

SOURCE: 40 FR 7440, Feb. 20, 1975, unless otherwise noted.

## Subpart A—Under 5 U.S.C. 552, as Amended

### § 1.1 Purpose and scope of regulations.

The regulations in this subpart are issued to implement the public information provisions of section 552 of title 5, United States Code, as amended. These regulations apply to all constituent units of the Department of the Treasury, and supersede any regulations on the same subject issued by any constituent unit prior to February 19, 1975, which are inconsistent herewith. Any inconsistency whether actual or apparent, shall be resolved by resort to the regulations in this Subpart A. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the consistent units or their officials, employees, or records. In order that interested parties may more readily find them, the constituent units of the Department are hereby authorized to reprint these regulations in their entirety (less any appendices not applicable to the unit in question) in these titles of the Code of Federal Regulations which normally contain regulations applicable to such constituent units. In connection with such republication, constituent units may supplement and implement these regulations with material applicable only to the constituent unit in question, provided such additional material is not inconsistent herewith. In the event of any actual or apparent inconsistency, these Departmental regulations shall govern. Persons interested in the records of a particular constituent unit should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that constituent unit. (See Appendices to this subpart for cross references.) The head of each unit is hereby also authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to his unit. The constituent units of the Department of the Treasury for the purposes of this Part are:

(a) The Office of the Secretary of the Treasury, which includes the offices of:

(1) The Secretary, including immediate staff;

(2) The Deputy Secretary, including immediate staff;

(3) The Under Secretary for Monetary Affairs, including immediate staff;

(4) The Under Secretary, including immediate staff;

(5) The General Counsel and also the Legal Division, except legal counsel to the constituent units listed in paragraphs (b) through (m) of this section;

(6) The Assistant Secretary (International Affairs) and all offices reporting to him, including immediate staff;

(7) The Assistant Secretary (Trade, Energy, and Financial Resources Policy Coordination) and all offices reporting to him, including immediate staff;

(8) The Assistant Secretary (Economic Policy) and the Office of Domestic Gold and Silver Operations and all other offices reporting to him, including immediate staff;

(9) The Fiscal Assistant Secretary, including immediate staff;

(10) The Assistant Secretary (Administration) and all offices reporting to him, including immediate staff;

(11) The Assistant Secretary (Legislative Affairs), including immediate staff;

(12) The Assistant Secretary (Enforcement, Operations, and Tariff Affairs), including immediate staff, and the Offices of Law Enforcement, including Interpol (National Central Bureau), Operations, Tariff Affairs and Foreign Assets Control reporting to him;

(13) The Special Assistant to the Secretary (Public Affairs), including immediate staff;

(14) The Special Assistant to the Secretary (Debt Management) and the office reporting to him, including immediate staff;

(15) The Special Assistant to the Secretary (National Security), including immediate staff;

(16) The Treasurer of the United States, including immediate staff;

(17) The Director of Practice, including immediate staff; and

(18) Persons concerned with the completion of actions under the Economic Stabilization Act of 1970, as amended.

(b) The Internal Revenue Service;

(c) The United States Customs Service;

(d) The United States Secret Service;

(e) The Bureau of Alcohol, Tobacco and Firearms;

(f) The Bureau of Engraving and Printing;

(g) The Bureau of Government Financial Operations;

(h) The Bureau of the Mint;

(i) The Bureau of the Public Debt;

(j) The office of the Comptroller of the Currency;

(k) The United States Savings Bond Division;

(l) The Consolidated Federal Law Enforcement Training Center; and

(m) The Assistant Secretary for Tax Policy, including immediate staff and all offices reporting to him.

For purposes of this subpart, the office of the legal counsel for the constituent units listed in paragraphs (b), (c), (d), (e), (h), (i), (j), and (m) of this section are to be considered a part of such constituent unit. Any office, which is now in existence or may hereafter be established, which is not specifically listed or known to be a constituent of any of those listed above, shall be deemed a part of the Office of the Secretary for the purpose of making requests for records under these regulations.

### § 1.2 Information made available.

(a) *General.* Section 552 of Title 5 of the United States Code provides for access to information and records developed or maintained by Federal agencies. Generally, such section divides agency information into three major categories and provides methods by which each category is to be made available to the public. The three major categories, for which the disclosure requirements of the constituent units of the Department of the Treasury are set forth in this subpart, are as follows:

(1) Information required to be published in the FEDERAL REGISTER (see § 1.3 below);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1.4 below); and

(3) Information required to be made available to any member of the public upon specific request (see § 1.5 below). The provisions of section 552 are intended to assure the right of the public to information. Section 552 is not authority to withhold information from Congress.

(b) Subject only to the exemptions set forth in § 1.2(c) the public generally or any member thereof shall be afforded access to information or records in the possession of any constituent unit of the Department of the Treasury. Such access shall be governed by the regulations in this subpart A and any regulations of a constituent unit implementing or supplementing them.

(c) *Exemptions*—(1) *In general.* Under 5 U.S.C. 552(b), the disclosure requirements of section 552(a) do not apply to certain matters which are:

(i) (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order (See 31 CFR Part 2);

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute (other, than 5 U.S.C. 552(b)): *Provided,* That such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(viii) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) The exemptions set forth in paragraph (c)(1) of this section apply to each of the three categories of information set forth in paragraph (a) of this section.

(3) *Segregable portions of records.* Any reasonably segregable portion of a record shall be provided to any person, after deletion of the portions which are exempt under 5 U.S.C. 552(b) (see paragraph (c)(1) of this section). The term "reasonably segregable portion" as used in this paragraph means any portion of the record which is not exempt from disclosure by 5 U.S.C. 552 (b) and which after deletion of the exempt material still conveys meaningful and nonmisleading information.

(4) *Application of exemptions.* Even though an exemption described in paragraph (c) (1) of this section may be fully applicable to a matter in a particular case, a constituent unit of the Department of the Treasury may, if not precluded by law, elect under the circumstances of that case not to apply the exemption to such matter. The fact that the exemption is not applied by a constituent unit in that particular case will have no precedential significance as to the application of the exemption to such matter in other cases, but is merely an indication that, in the particular case involved, the constituent unit finds no compelling necessity for applying the exemption to such matter.

[40 FR 7440, Feb. 20, 1975, as amended at 42 FR 9382, Feb. 16, 1977]

### § 1.3 Publication in the Federal Register.

(a) *Requirement.* Subject to the application of the exemptions described in § 1.2(c) and subject to the limitations provided in paragraph (b) of this section, each constituent unit of the Department of the Treasury is hereby required, in conformance with 5 U.S.C. 552(a)(1), to separately state, publish and maintain current in the FEDERAL REGISTER for the guidance of the public the following information with respect to such constituent unit:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the constituent unit; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a) (1) through (4) of this section.

(b) *Limitations*—(1) *Incorporation by reference in the* FEDERAL REGISTER. Matter reasonably available to the class of persons affected thereby, whether in a private or public publication, will be deemed published in the FEDERAL REGISTER for purposes of paragraph (a) of this section when it is incorporated by reference therein with the approval of the Director of the Federal Register. The matter which is incorporated by reference must be set forth in the private or public publication substantially in its entirety and not merely summarized or printed as a synopsis. Matter, the location and scope of which are familiar to only a few persons having a special working knowledge of the activities of the Department of the Treasury, may not be incorporated in the FEDERAL REGISTER by reference. Matter may be incorporated by reference only pursuant to the provisions of 5 U.S.C. 552(a)(1) and 1 CFR Part 20.

(2) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of this section which is required to be published in the FEDERAL REGISTER, such person is not required in any manner to resort to, or be adversely affected by, such matter if it is not so published or is not incorporated by reference therein pursuant to paragraph (b)(1) of this section. Thus, for example, any such matter which imposes an obligation and which is not so published or incorporated by reference will not adversely change or affect a person's rights.

### § 1.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions described in § 1.2(c) each constituent unit of the Department of the Treasury is hereby required in conformance with 5 U.S.C. 552(a)(2), to make available for public inspection and copying or, in the alternative, to promptly publish and offer for sale the following information with respect to such constituent unit:

(1) Final opinions, including concurring and dissenting opinions, and orders, if such opinions and orders are made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the constituent unit but are not published in the FEDERAL REGISTER; and

(3) Its administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* Each constituent unit of the Department of the Treasury is hereby also required, in conformance with 5 U.S.C. 552(a)(2), to maintain and make available for public inspection and copying current indexes identifying any matter described in paragraphs (a) (1) through (3) of this section which is issued, adopted, or promulgated after July 4, 1967, and which is required to be made available for public inspection or published. In addition, each constituent unit shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless the head of such unit (or his delegate) determines by order published in the FEDERAL REGISTER that the publication would be unnecessary and impracticable, in which case the constituent unit shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication.

(c) *Effect of failure to publish or make available.* No matter, described in paragraphs (a) (1) through (3) of this section which is required by this paragraph to be made available for public inspection or published, may be relied upon, used, or cited as precedent by the constituent unit against a party, other than an agency, unless that party has actual and timely notice of the terms of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this paragraph. This paragraph may be interpreted to apply only to matters which have precedential significance. It does not apply to matters which have been made available pursuant to § 1.3.

(d) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, a constituent unit of the Department of the Treasury may, in accordance with 5 U.S.C. 552(a)(2), delete identifying details contained in any matter described in paragraphs (a) (1) through (3) of this section before making such matter available for inspection or publishing it. However, in every case where identifying details are so deleted, the justification for the deletion must be explained in writing in an attachment to the document from which the identifying details have been deleted.

(e) *Public reading rooms.* Each constituent unit of the Department of the Treasury shall make available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a) (1) through (3) of this section which are required by such paragraph (a) to be made available for public inspection or published in the current indexes such matters. Facilities shall be provided whereby a person may inspect the material and obtain copies of that which is shelved. Fees shall not be charged for access to materials, but fees are to be charged in accordance with § 1.6 for copies of material provided to the person. (See the appendices to this subpart for the location of established reading rooms of constituent units of the Department of the Treasury.)

### § 1.5 Specific requests for other records.

(a) *In general.* Except with respect to the records made available under §§ 1.3 and 1.4, above, but subject to the application of the exemptions described in § 1.2 (c), above, each constituent unit of the Department of the Treasury, shall, in conformance with 5 U.S.C. 552 (a) (3), upon any request, which is for reasonably described records and conforms in every respect with the rules and procedures of this subpart A, particularly this section, § 1.6 and the applicable appendix to this subpart, make the requested records promptly available to any person. Any request or any appeal from the initial denial of a request which does not comply with the foregoing requirements and those set forth elsewhere in this subpart A, will not be deemed subject to the time constraints of paragraphs (g), (h), and (i) of this section, unless and until amended so as to comply. However, constituent units shall, nevertheless, make every reasonable effort to comply with such request within such time constraints or, in the alternative, promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this subpart. This section applies only to records in being which are in the possession or control of the constituent unit. There is no requirement that records be created or data processed in a format other than required for governmental purposes in order to comply with a request for records.

(b) *Requests for records not in control of constituent unit.* (1) Where the request is for a record in the possession or under the control of a constituent unit of the Department other than that to which the request was addressed, the request for such record shall immediately be transferred to the appropriate constituent unit and the requester notified to that effect. Such referral shall not be deemed a denial of access within the meaning of these regulations. The constituent unit of the Department to which such referral is made shall treat such request as a new request addressed to it and the time limits for response set forth by paragraph (g) (1) of this section shall commence when the referral is received by the designated office or officer of the constituent unit. Where the request is for a record which is not in the possession or control of any constituent unit of the Department of the Treasury, the requester shall be so advised and the request shall be returned to the requester.

(2) When an unclassified record created by another Department agency is in the possession of a constituent unit of the Department of the Treasury, and that record is requested under the FOIA, the responsible Treasury official shall make the determination to release or not to release the information. If a question exists whether the record should be exempt from disclosure under the FOIA, the responsible Treasury official may request immedi-

ate advice from the originating agency. However, the ultimate decision to release or withhold from disclosure remains with the responsible Treasury official. When a request is denied, the requester shall be advised of the right to appeal and shall be advised that a request for the record may also be made directly to the originating agency. If Treasury's decision is appealed, the originating agency may again be requested to advise immediately regarding the releasability of the records. The ultimate appeal decision, however, again rests with the responsible Treasury official.

(3) When a classified record, originated by another agency, is in the possession of a constituent unit of the Department of the Treasury, and an FOIA request for that record is received, the request shall be referred to the originating Department or agency for a direct response. The requester, however, shall be advised of the referral. This is not a denial of an FOIA request; thus no appeal rights accrue to the requester.

(4) When a record created by another Department or agency, is in the possession of a constituent unit of the Department of the Treasury and the record contains both classified and unclassified material, the entire record shall be referred to the originating agency. As in subparagraph 3 above, a referral is not a denial of an FOIA request and no appeal rights accrue to the requester, but the requester shall be immediately notified of the referral.

(c) *Form of request.* In order to be subject to the provisions of this section, a request for records shall—

(1) Be made in writing and signed by the person making the request,

(2) State that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552 or these regulations,

(3) Be addressed to the office or officer of the constituent unit to which the subject matter of the request is of paramount concern, unless the requester is unable to ascertain the appropriate constituent unit, in which event, the request shall be addressed as specified in Appendix A hereto for the Office of the Secretary (See the appendices to this subpart for the office or officer to which requests shall be addressed for each constituent unit),

(4) Reasonably describe the records in accordance with paragraph (d) of this section,

(5) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted,

(6) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them, and

(7) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with § 1.6 hereof, or request that such fees be reduced or waived and state the justification for such request (see § 1.6(d) below).

Where the initial request, rather than stating a firm agreement to pay the fees ultimately determined in accordance with § 1.6, places an upper limit on the amount the requester agrees to pay, which upper limit is deemed likely to be lower than the fees estimated to ultimately be due, or where the requester asks for an estimate of the fees to be charged, the requester shall be promptly advised of the estimate of fees due and asked to agree to pay such amount. Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver in accordance with § 1.6 (d) below and notify the requester of his decision and, if such decision results in the requester being liable for all or part of the fees normally due, ask the requester to agree to pay the amount so determined. The requirements of this paragraph (c) will not be deemed met until the requester has explicitly agreed to pay the fees applicable to his request for records, if any, or has made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this paragraph can be processed in accordance with this section. However, every effort shall be made to comply with the request, including, where appropriate, asking the requester to remedy any defects in his request.

(d) *Reasonable description of records.* (1) The request for records must describe the records in reasonably sufficient detail to enable the Department of the Treasury employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the constituent unit. While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, and, if known, the date and location of the requested record. However, it is suggested that the person making the request furnish any additional information which will more clearly identify the requested records. Where the request does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine his request. Such opportunity may, where desirable, involve a conference with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury as a device for improperly withholding records from the public.

(2) The Department of the Treasury will make every reasonable effort to comply fully with all requests for access to records subject only to any applicable exemption set forth in § 1.2 (c). However, in any situation in which it is determined that a request for voluminous records would unduly burden and interfere with the operations of a constituent unit, the person making the request will be asked to be more specific and to narrow the request, and to agree on an orderly procedure for the production of the requested records, in order to satisfy the request without disproportionate adverse effects on agency operations.

(e) *Date of Receipt of Request.* A request for records shall be considered to have been received for purposes of this subpart on the later of the dates on which—

(1) The requirements of paragraph (c) of this section have been satisfied, and, where applicable,

(2) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined due in accordance with § 1.6, or

(3) The fees have been waived in accordance with § 1.6 (d), or

(4) Payment in advance has been received from the requester. Requests for records and any separate agreement to pay, final notification of waiver of fees, or letter transmitting prepayment shall be promptly stamped with the date of receipt or dispatch by the office prescribed in the appropriate appendix. The latest of such stamped dates will be deemed for the purposes of this subpart to be the date of receipt of the request. As soon as the date of receipt has been established as provided above, the requester shall be informed and advised when he may expect a response within the time limits specified in paragraph (g)(1) of this section, unless extended as provided in paragraph (i)(1) of this section, and the title of the officer responsible for such response.

(f) *Search for record requested.* Upon the receipt of a request, search services will be performed by Department of the Treasury employees to identify and locate the requested records. With respect to records maintained in computerized form, a search shall include services functionally analogous to searches for records which are maintained in a conventional form. However, a constituent unit of the Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record.

(g) *Initial determination*—(1) *In general.* Initial determinations as to whether to grant requests for records will be made by the officers designated in the appendices to this part. Those determinations will be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (e) of this section, unless the designated officer invokes an extension pursuant to paragraph (i)(1) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(2) *Granting of request.* If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a copy of such records shall be mailed to him together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter. In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees involved in complying with the request. In such case, the records shall promptly be made available for inspection at the time and place stated in a manner so as not to interfere with their use by the Department of the Treasury or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the room where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished to him upon payment of the established fees prescribed by § 1.6.

(3) *Denial of request.* If it is determined that the request for records should be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request will be so notified by mail. The letter of notification shall specify the city or other location where the requested records are situated (if known), contain a statement of the reasons for not granting the request in full, set forth the name and title or position of the responsible official, advise the person making the request of the right to administrative appeal in accordance with paragraph (h) of this section, and specify the official or office to which such appeal shall be submitted.

(4) *Inability to locate records within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (i)(1) of this section, the search for the records shall continue, but the requester shall be so notified, and advised that he may consider such notification a denial of access within the meaning of paragraph (g)(3) of this section, and provided with the address to which an administrative appeal may be addressed. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate the records. Such voluntary extension of time will not constitute a waiver of the requester's right to appeal any denial of access ultimately made or his right to appeal in the event of failure to comply with the time extension granted.

(h) *Administrative appeal.* At any time within 35 days after the date of the notification described in paragraph (g) of this section or the date of the letter transmitting the last records released, whichever is later, the requester may submit an administrative appeal to the official specified in the appropriate appendix to this subpart whose title and address should also have been included in the initial determination to deny access to the records. The appeal shall—

(1) Be made in writing and signed by the requester,

(2) Be addressed to and mailed or hand delivered, within 35 days of the date of the initial determination, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed.),

(3) Reasonably describe, in accordance with paragraph (d) of this section, the records requested from the denial of access to which an appeal is being taken,

(4) Set forth the address where the requester desires to be notified of the determination on appeal,

(5) Specify the date of the initial request and date of the letter denying the initial request, and

(6) Petition such official to grant the request for records and state any arguments in support thereof.

Appeals shall be promptly stamped with the date of their receipt by the office to which addressed and such stamped date will be deemed to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged by the responsible official and the requester advised of the date of receipt established by the foregoing and when a response is due in accordance with this paragraph. The determination to affirm the initial denial (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (i)(1) of this section. If it is determined that the appeal from the initial denial is to be denied (in whole or in part), the requester shall be notified in writing of the denial, the reasons therefor, the name and title or position of the official responsible for the denial on appeal, and of the provisions of 5 U.S.C. 552(a)(4) for judicial review of that determination. If a determination cannot be made within the 20-day period (or any extension thereof pursuant to paragraph (i)(1) of this section) the requester shall be promptly notified in writing that the determination will be made as soon as practicable but that the requester is nonetheless entitled to commence an action in a district court as provided in paragraph (k) of this section. However, the requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. Such voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(i) *Time extensions*—(1) *10-day extension.* In unusual circumstances, the time limitations specified in paragraphs (g) and (h) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for such extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time shall not cumulatively total more than 10 additional working days. (For example, if an extension pursuant to this subparagraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the official who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellate review.) As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request, the following:

(i) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the official to whom the request is made is located;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more constituent units within the Department of the Treasury or within a constituent unit thereof (other than the legal staff or the component concerned with public affairs) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under 5 U.S.C. 552 do not constitute a basis for an extension under this subdivision.

(2) *Extension by judicial review.* If a constituent unit of the Department of the Treasury fails to comply with the time limitations specified in paragraph (g) or (h) of this section and the person making the request initiates a suit in accordance with paragraph (k) of this section, the court in which the suit was initiated may retain jurisdiction and allow the constituent unit ad-

ditional time to review its records, provided that the constituent unit demonstrates the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

(j) *Failure to comply.* If a constituent unit of the Department of the Treasury fails to comply with the time limitations specified in paragraph (g), (h), or (i) of this section, any person making a request for records shall be deemed to have exhausted his administrative remedies with respect to such request. Accordingly, the person making the request may initiate suit as set forth in paragraph (k) of this section.

(k) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (h) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (g) and (h) of this section, respectively, together with any extension pursuant to paragraph (i)(1) of this section or by agreement of the requester, the person making the request may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4). Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C., App.) applicable to actions against an agency of the United States. Delivery of process shall be directed to the official specified in the appropriate appendix to this subpart as the official to receive such process.

(l) *Proceeding against officer or employee.* In accordance with 5 U.S.C. 552(a)(4)(F), the Civil Service Commission will, upon the issuance of a specified finding by a court, initiate a proceeding to determine whether disciplinary action is warranted against an officer or employee of a constituent unit of the Department of the Treasury who was primarily responsible for a withholding of records. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the head of the constituent unit and the Secretary of the Treasury, and shall send copies of the findings and recommendations to the officer or employee or his representative. For the purposes of this paragraph the officer or employee primarily responsible for withholding records is the officer or employee:

(1) Who, when no response is received within the time limits specified by paragraphs (g), (h), or (i) of this section,

(i) Is identified by title in paragraph (e) of this section as responsible for the initial determinations, or

(ii) Acknowledged the receipt of the appeal as provided in paragraph (h) of this section, unless such acknowledgement identifies another officer or employee as being responsible for the decision; or

(2) Who signed the appellate determination, unless another officer or official is named in such determination as being primarily responsible for the decision. When the designated deciding official is not, in fact, the person making the decision, because of direction from higher authority, the designated deciding official shall state in the response to the requester that his decision is made by direction and identify the officer or employee who is responsible for such direction. When the officer or employee designated in paragraph (e) of this section as responsible for the initial determination has referred the request to another constituent unit or to another officer or employee, he remains the officer or employee responsible within the meaning of this paragraph until he has notified the requester of such referral and the title of the officer or employee who will be responsible thereafter for the response.

[40 FR 7440, Feb. 20, 1975, as amended at 44 FR 10061, Feb. 16, 1979]

### § 1.6 Fees for services.

(a) *In General.* (1) This fee schedule is applicable uniformly to all constituent units of the Department of the Treasury and supersedes fees schedules heretofore published by any constituent unit of the Department. The fees indicated are to be charged only for search and duplication and under no circumstances will a fee be charged for determining whether an exemption can or should be asserted, deleting exempt matter being withheld from records to be furnished, or monitoring a requester's inspection of records made available in this manner.

(2) While certain relevant publications which are available for sale through the Government Printing Office will be placed on the shelves of the reading rooms and similar public inspection facilities, such publications will not be available for sale there. Persons desiring to purchase such publications should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, copies of pages of such publications on the public inspection facilities' shelves may be obtained at those facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* (1) Unless performed without charge, waived or reduced in accordance with paragraphs (c) or (d) of this section, fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(2) Fees may be waived or reduced at the discretion of the official who determines the availability of records, when the record is not located for any reason or when it is determined to be exempt from disclosure.

(c) *Services performed without charge.* The heads of constituent units or their delegates are authorized to determine, under the rulemaking procedures of 5 U.S.C. 553, which classes of records under their control may be provided to the public without charge, or at a reduced charge.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case by case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by such official when he determines either that:

(i) The records are being requested by, or on behalf of, an individual who demonstrates in writing under penalty of perjury to the satisfaction of the deciding official that he is indigent and compliance with the request does not constitute an unreasonable burden on the constituent unit of the Department (to demonstrate indigency an individual shall show that he is eligible for Federally aided public assistance designed to supplement income on the basis of financial need, e.g., food stamp program); or

(ii) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(2) Normally, no charge should be made for providing records to Federal, state or foreign governments, international governmental organizations, or local governmental agencies or offices thereof in accordance with paragraph (d)(1)(ii) of this section.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to such official within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly.

(e) *Avoidance of unexpected fees.* In order to protect the requester from unexpected fees, all requests for records shall state the agreement of the requester to pay the fees determined in accordance with paragraph (g) of this section or state the amount which the requester has set as an acceptable upper limit he is willing to pay to cover the costs of processing the request. When the fees for processing the request are estimated by the constituent unit of the Department of the Treasury to exceed that limit, or when the requester has failed to state a limit and the costs are estimated to exceed $50 and the relevant constituent unit has not then determined to waive or reduce the fees, a notice shall be sent to the requester. This notice shall:

(1) Inform the requester of the estimated costs;

(2) Extend an offer to the requester to confer with personnel of the relevant constituent unit of the Department of the Treasury in an attempt to reformulate the request in a manner

which will reduce the fees and still meet the needs of the requester; and

(3) Inform the requester that the running of the time period, within which the relevant constituent unit of the Department of the Treasury is obliged to make a determination on the request, has been tolled pending a reformulation of the request or the receipt of advance payment or an agreement from the requester to bear the estimated costs.

(f) *Form of payment.* (1) Payment shall be made by check or money order payable to the order of the Treasury of the United States or that relevant constituent unit of the Department of the Treasury.

(2) When the estimated costs exceed $50, the requester may be required to enter into a contract for the payment of actual costs determined in accordance with paragraph (g) of this section, which contract may provide for prepayment of the estimated costs in whole or in part.

(g) *Amounts to be charged for specified services.* The fees for services performed by the relevant constituent unit of the Department of the Treasury shall be imposed and collected as set forth in this paragraph. Should services other than those described be requested and rendered, appropriate fees shall be established by the head of the relevant constituent unit of the Department, or his delegate, and such fees shall be imposed and collected pursuant to 31 U.S.C. 483a, but subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) Photocopies, per page up to 8½" by 14", $0.10 each, except that no charge will be imposed for copying 10 pages or less when less than one hour is consumed in locating the records requested.

(ii) Photographs, films, and other materials—actual cost.

The constituent unit of the Department may furnish the records to be released to a private contractor for copying and shall charge the person requesting the records the actual cost of duplication charged by the private contractor. No fee will be charged where the requester furnishes the supplies and equipment and makes the copies at the government location.

(2) *Unpriced printed materials.* Otherwise printed material, which is available at the location where requested and which does not require duplication in order that copies may be furnished, will be provided at the rate of $0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* (i) The fee charged for services of personnel involved in locating records shall be $5 for each hour or fraction thereof, except that no charge shall be imposed for a search consuming less than one hour.

(ii) Where, because of the nature of the records sought and the manner in which such records are stored, a computer search is required, the fee shall be $5 for each hour (or fraction thereof) of personnel time associated with the search plus an amount which reflects the actual costs of extracting the stored information in the format in which it is normally produced, based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

[40 FR 7440, Feb. 20, 1975, as amended at 42 FR 2314, Jan. 11, 1977]

## APPENDIX A—OFFICE OF THE SECRETARY

1. *In general.* This appendix applies to the Office of the Secretary as defined in 31 CFR 1.1(a). It identifies the location of the public reading room at which Office of the Secretary documents are available for public inspection and copying, the officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process.

2. *Public reading room.* The public reading room for the Office of the Secretary is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5 (g) as to whether to grant requests for records for the Office of the Secretary will be made by the head of the organizational unit having immediate custody of the records requested or his delegate. Requests for records should be addressed to:

Freedom of Information Request, O.S., Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

Requests may be delivered personally to the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office of the Secretary will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records requested, or the delegate of such officer. Appeals made from initial determinations to deny records made by mail should be addressed to:

Freedom of Information Appeal, O.S., Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

Appeals may be delivered personally to the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury or his delegate and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

## APPENDIX B—INTERNAL REVENUE SERVICE

1. *In general.* This appendix applies to the Internal Revenue Service. It identifies the locations of the public reading rooms at which documents of the Internal Revenue Service are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officers designated to receive service of process and the addresses for delivery of requests, appeals and service of process. For additional rules promulgated specifically with respect to the Internal Revenue Service, see 26 CFR 601.1 701 and 601.702.

2. *Public reading rooms.* Public reading rooms for the Internal Revenue Service are maintained at the following locations:

### NATIONAL OFFICE

*Mailing address:* Director, Disclosure Operations Division, Internal Revenue Service, P.O. Box 338, Ben Franklin Station, Washington, D.C. 20044

*Location:* 1111 Constitution Avenue NW., Room 1567, Washington, D.C. 20224.

### NORTH ATLANTIC REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, room 1002, 90 Church Street, New York, N.Y. 10007.

*Location:* Same as mailing address.

### MID-ATLANTIC REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, P.O. Box 12805, Philadelphia, Pa. 19106

*Location:* Federal Office Building, 600 Arch Street.

### SOUTHEAST REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, P.O. Box 926, Atlanta, Ga. 30301.

*Location:* 275 Peachtree Street NE., Atlanta, Ga. 30303.

### MIDWEST REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, 230 South Dearborn Street, Room 2896, Chicago, Ill. 60604.

*Location:* Same as mailing address.

### CENTRAL REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, P.O. Box 1699, Cincinnati, Ohio 45201.

*Location:* Room 7106, Federal Office Building, 550 Main Street.

### SOUTHWEST REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, 1100 Commerce Street, Room 13E10, Dallas, Tex. 75222.

*Location:* Same as mailing address.

### WESTERN REGION

*Mailing address:* Freedom of Information Reading Room, Internal Revenue Service, 450 Golden Gate Avenue, Box 36040, San Francisco, Calif. 94105.

*Location:* Same as mailing address.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to

grant requests for records of the Internal Revenue Service will be made by those officials specified in 26 CFR 601.702.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or his delegate. Appeals made by mail should be addressed to:

Commissioner of Internal Revenue, c/o Ben Franklin Station, P.O. Box 929, Washington, D.C. 20044.

Requests may be delivered personally to the Director of the Disclosure Division in the Office of the Chief Counsel, in the Internal Revenue Building, located at 1111 Constitution Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Commissioner of Internal Revenue and shall be delivered to such officer at the following location:

Commissioner, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC: A: OS.

[40 FR 7440, Feb 20, 1975, as amended at 43 FR 42249, Sept. 20, 1978]

## APPENDIX C—UNITED STATES CUSTOMS SERVICE

1. *In general.* This appendix applies to the United States Customs Service. It identifies the locations of the public reading rooms at which United States Customs Service documents are available for public inspection and copying, the officers designated to make initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of the requests, appeals and service of process. For additional rules promulgated specifically with respect to the United States Customs Service, see 19 CFR Part 103.

2. *Public reading rooms.* Public reading rooms for the United States Customs Service are maintained at the following locations:

United States Customs Service (Headquarters), 1301 Constitution Avenue NW, Washington, D.C. 20229.
Region I—Boston, 24th Floor, John F. Kennedy Building, Government Center, Boston, Mass. 02203.
Region II—New York, 6 World Trade Center, New York, N.Y. 10048.
Region III—Baltimore, U.S. Customshouse, 40 Gay Street, Baltimore, Md. 21202.
Region IV—Miami, Plaza Executive Centre, Suite 300, 7370 Northwest 36th St., Miami, Fla. 33166.
Region V—New Orleans, Room 13036, Federal Building, 701 Loyola Ave., New Orleans, La. 70113.
Region VI—Houston, 500 Dallas St., Suite 1240, Houston, Tex. 77002.
Region VII—Los Angeles, New Federal Building, 300 North Los Angeles St., Los Angeles, Calif. 90012.
Region VIII—San Francisco, New Federal Bldg., 450 Golden Gate Ave., Box 37117, San Francisco, Calif. 94102.
Region IX—Chicago, Room 1501, 55 East Monroe St., Chicago, Ill. 60603.

3. *Requests for records.* (a) For records which are not maintained at Headquarters, initial determinations whether to grant requests for records under 31 CFR 1.5(g) will be made by the Regional Commissioner of Customs in whose region the records are maintained. Requests may be mailed or delivered personally to the respective regional commissioner at the following locations:

Region I—Boston, 24th Floor, John F. Kennedy Bldg., Government Center, Boston, Mass. 02203.
Region II—New York, 6 World Trade Center, New York, NY. 10048.
Region III—Baltimore, U.S. Customshouse, 40 Gay St., Baltimore, Md. 21202.
Region IV—Miami, Plaza Executive Centre, Suite 300, 7370 Northwest 36th St., Miami, Fla. 33166.
Region V—New Orleans, Room 13036, Federal Building, 701 Loyola Ave., New Orleans, La. 70113.
Region VI—Houston, 500 Dallas St., Suite 1240, Houston, Tex. 77002.
Region VII—Los Angeles, New Federal Bldg., 300 North Los Angeles St., Los Angeles, Calif. 90012.
Region VIII—San Francisco, New Federal Bldg., 450 Golden Gate Ave., Box 37117, San Francisco, Calif. 94102.
Region IX—Chicago, Room 1501, 55 East Monroe St., Chicago, Ill. 60603.

(b) Requests for information from Headquarters of the United States Customs Service should be mailed or personally delivered to the Director, Classification and Value Division, Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue N.W., Washington, D.C. 20229. Any substantive denial of an initial request for information under 31 CFR 1.5(g) will be made by the Assistant Commissioner, Office of Regulations and Rulings, United States Customs Service.

(c) All such requests should be conspicuously labeled on the face of the envelope "Freedom of Information Act Request" or "FOIA Request".

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) will be made

by the Commissioner of Customs, and all such appeals should be mailed or personally delivered to the United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

[40 FR 29290, July 11, 1975]

### APPENDIX D—UNITED STATES SECRET SERVICE

1. *In general.* This appendix applies to the United States Secret Service. It identifies the location of the public reading room at which Secret Service documents are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. For additional rules promulgated specifically with respect to the U.S. Secret Service, see 31 CFR Parts 401 through 408.

2. *Public reading rooms.* The U.S. Secret Service will provide a room on an ad hoc basis when necessary.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the U.S. Secret Service will be made by Staff Assistant, Freedom of Information and Privacy Acts, U.S. Secret Service. Requests made by mail should be addressed to:

Staff Assistant, Freedom of Information and Privacy Acts, U.S. Secret Service, 1800 G St. NW., Room 908, Washington, D.C. 20223.

Requests may be delivered personally to Staff Assistant, Freedom of Information and Privacy Acts, U.S. Secret Service, 1800 G Street NW., Room 908, Washington, D.C. 20223.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the U.S. Secret Service will be made by the Deputy Director, U.S. Secret Service. Appeals made by mail should be addressed to:

Freedom of Information Appeal, Deputy Director, U.S. Secret Service, 1800 G Street NW., Room 800, Washington, D.C. 20223.

Requests may be delivered personally to the Deputy Director, U.S. Secret Service, in Room 800, 1800 G Street NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the U.S. Secret Service Legal Counsel and shall be delivered to such officer at the following location:

Legal Counsel, U.S. Secret Service, 1800 G St. NW., Room 842, Washington, D.C. 20223.

[40 FR 29290, July 11, 1975, as amended at 40 FR 4090, Oct. 21, 1975]

### APPENDIX E—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms. It identifies the locations of the public reading rooms at which documents of the Bureau of Alcohol, Tobacco and Firearms are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process, and the addresses for delivery of requests, appeals, and service of process. For additional rules promulgated specifically with respect to the Bureau of Alcohol, Tobacco and Firearms, see 27 CFR Part 71.

2. *Public reading rooms.* Public reading rooms for the Bureau of Alcohol, Tobacco and Firearms are maintained at the following locations:

#### BUREAU HEADQUARTERS

Mailing address: Assistant to the Director for Public Affairs, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226.

Location: Same as mailing address.

#### NORTH ATLANTIC REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms, 6 World Trade Center, New York, New York 10048.

Location: Same as mailing address.

#### MID-ATLANTIC REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms, 2 Penn Center Plaza, Philadelphia, Pennsylvania 19102.

Location: Same as mailing address.

#### SOUTHEAST REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms, Post Office Box 2009, Atlanta, Georgia 30303.

Location: Regional Director, Bureau of Alcohol, Tobacco and Firearms, 3835 Northeast Expressway, Atlanta, Georgia 30303.

#### MIDWEST REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms,

230 South Dearborn Street, Chicago, Illinois 60604.
Location: Same as mailing address.

### CENTRAL REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms, 550 Main Street, Cincinnati, Ohio 45202.
Location: Same as mailing address.

### SOUTHWEST REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms, 1114 Commerce Street, Dallas, Texas 75202.
Location: Same as mailing address.

### WESTERN REGION

Mailing address: Regional Director, Bureau of Alcohol, Tobacco and Firearms, 525 Market Street, 34th Floor, San Francisco, California 94105.
Location: Same as mailing address.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Bureau of Alcohol, Tobacco and Firearms will be made by the Assistant to the Director for Public Affairs or his delegate. Requests made by mail should be addressed to:

Assistant to the Director for Public Affairs,
Bureau of Alcohol, Tobacco and Firearms,
1200 Pennsylvania Avenue NW., Washington, D.C. 20226.

Requests may be delivered personally to the office of the:

Assistant to the Director for Public Affairs,
Bureau of Alcohol, Tobacco and Firearms,
1200 Pennsylvania Avenue NW., Washington, D.C. 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determination under 31 CFR 1.5(h) with respect to records of the Bureau of Alcohol, Tobacco and Firearms will be made by the Director of the Bureau of Alcohol, Tobacco and Firearms or his delegate. Appeals made by mail should be addressed to:

Director, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW.,
Washington, D.C. 20226.

Requests may be delivered personally to the office of the Director, Bureau of Alcohol, Tobacco and Firearms at 1200 Pennsylvania Avenue, NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco and Firearms and shall be delivered to such officer at the following location:

Director, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW.,
Washington, D.C. 20226. Attention: Chief Counsel.

## APPENDIX F—BUREAU OF ENGRAVING AND PRINTING

1. *In general.* This appendix applies to the Bureau of Engraving and Printing. It identifies the locations of the public reading rooms at which Bureau of Engraving and Printing documents are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals, and service of process.

2. *Public reading rooms.* No room has been set aside for this purpose. The Bureau of Engraving and Printing will provide a room on an ad hoc basis when necessary.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Bureau of Engraving and Printing will be made by the Director, Bureau of Engraving and Printing. Requests made by mail should be addressed to:

Director, Bureau of Engraving and Printing,
Department of the Treasury, 14th and C Streets SW., Washington, D.C. 20228.

Requests may be delivered personally to the Director, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, D.C.

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of Engraving and Printing will be made by the Under Secretary of the Treasury. Appeals made by mail should be addressed to:

Under Secretary of the Treasury, Department of the Treasury, 1500 Pennsylvania
Avenue NW., Room 3312, Washington, D.C. 20220.

Requests may be delivered personally to the Under Secretary of the Treasury in Room 3312, Main Treasury Building located at 1500 Pennsylvania Avenue, NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury, or his delegate, and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building,
1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

[40 FR 7440, Feb. 20, 1975, as amended at 43 FR 60274, Dec. 27, 1978]

## APPENDIX G—BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

1. *In general.* This appendix applies to the Bureau of Government Financial Operations. It identifies the location of the public reading room at which documents of the Bureau of Government Financial Operations are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process.

2. *Public reading rooms.* The public reading room for the Bureau of Government Financial Operations is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) whether to grant requests for records will be made by the Special Assistant. Requests made by mail should be addressed to:

Special Assistant (FOIA), Bureau of Government Financial Operations, Department of the Treasury, Room 600, Treasury Annex No. 1, Washington, D.C. 20226.

Requests may be delivered personally to the office of the Special Assistant, Room 600, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place NW., Washington, D.C.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) will be made by the Commissioner, Bureau of Government Financial Operations. Appeals made by mail should be addressed to:

Commissioner, Bureau of Government Financial Operations (FOIA), Department of the Treasury, Room 618, Treasury Annex No. 1, Washington, D.C. 20226.

Appeals may be delivered personally to the office of the Commissioner, Bureau of Government Financial Operations, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW, Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Commissioner, Bureau of Government Financial Operations, and shall be delivered to such office at the following location:

Commissioner, Bureau of Government Financial Operations, Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place NW, Washington, D.C. 20226.

[40 FR 7440, Feb. 20, 1975, as amended at 40 FR 29290, July 11, 1975]

## APPENDIX H—BUREAU OF THE MINT

1. *In General.* This appendix applies to the Bureau of the Mint. It identifies the location of the public reading room at which documents of the Bureau of the Mint are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process.

2. *Public reading rooms.* No room has been set aside for this purpose. The Bureau of the Mint will provide a room on an ad hoc basis when necessary.

3. *Requests for records.* Initial determinations under 31 CFR 1.5 (g) as to whether to grant requests for records of the Bureau of the Mint will be made by the Assistant Director for Public Services, Bureau of the Mint. Requests made by mail should be addressed to:

Chief, Information Systems and Documentation Branch, Bureau of the Mint, Department of the Treasury, Room 912, Warner Building, Washington, D.C. 20220.

Requests may be delivered personally to Information Systems and Documentation Branch of the Bureau of the Mint, Room 912, Warner Building located at 501 13th Street NW., Washington, D.C.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of the Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to:

Director of the Mint, Department of the Treasury, Washington, D.C. 20220.

Requests may be delivered personally to the office of the Director of the Mint in Room 2064, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Director of the Mint and shall be delivered to such officer at the following location:

Director of the Mint, Room 2064, Main Treasury Building, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

## APPENDIX I—BUREAU OF THE PUBLIC DEBT

1. *In general.* This appendix applies to the Bureau of the Public Debt. It identifies the location of the public reading room at

which Bureau of the Public Debt documents are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. For additional rules promulgated specifically with respect to the Bureau of the Public Debt, see 31 CFR Part 323.

2. *Public reading rooms.* The public reading room for the Bureau of the Public Debt is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records will be made by the Information Officer of the Bureau of the Public Debt. Requests made by mail should be addressed to:

Information Officer, Bureau of the Public Debt, Department of the Treasury, Washington, D.C. 20226.

Requests may be delivered personally to the office of the Information Officer, Room 200, Washington Building, 1435 G Street NW., Washington, D.C.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Bureau of the Public Debt will be made by the Commissioner of the Public Debt. Appeals made by mail should be addressed to:

Commissioner, Bureau of the Public Debt, Department of the Treasury, Washington, D.C. 20226.

Requests may be delivered personally to the Chief Counsel of the Bureau of the Public Debt, Room 200, Washington Building, 1435 G Street NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Commissioner of the Public Debt and shall be delivered to such officer at the following location:

Commissioner, Bureau of the Public Debt, Room 300, Washington Building, 1435 G Street NW., Washington, D.C. 20226.

## APPENDIX J—OFFICE OF THE COMPTROLLER OF THE CURRENCY

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency. It identifies the locations of the public reading rooms at which documents of the Office of the Comptroller of the Currency are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. For additional rules promulgated specifically with respect to the Office of the Comptroller of the Currency, see 12 CFR Part 4.

2. *Public reading rooms.* Public reading rooms for the Office of the Comptroller of the Currency are maintained at the following locations for the records as stated:

### NATIONAL OFFICE

Mailing address: Special Assistant for Public Affairs, Comptroller of the Currency, Washington, D.C. 20219.

Location: Sixth Floor, 490 L'Enfant Plaza East SW., Washington, D.C.

Locations at which certain records are available: All public records of the Comptrollers of the Currency, except the public portions of applications by national banking associations to establish a branch or seasonal agency and the public portion of applications to organize a national banking association during the period such applications are in the investigatory process in the respective regions, are available in the national office listed above. During this investigatory period, the public portions of these applications will be available in the respective regions listed below.

### REGIONAL OFFICES

Mailing address and location for each region listed below are the same:

| Region—Area within region | Office address |
|---|---|
| 1 Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut. | Three Center Plaza, Suite P–400, Boston, Mass. 02108. |
| 2 New York, New Jersey, Puerto Rico, Virgin Islands. | 33 Liberty St., Room 621, New York, N.Y. 10005. |
| 3 Pennsylvania, Delaware | Three Parkway, Suite 1316, Philadelphia, Pa. 19107. |
| 4 Indiana, Ohio, Kentucky | One Erieview Plaza, Cleveland, Ohio 44114. |
| 5 West Virginia, Maryland, Virginia, North Carolina, District of Columbia. | 400 North Eighth St., Room 5215, Richmond, Va. 23240. |
| 6 South Carolina, Georgia, Florida. | 1510 First National Bank Bldg., Two Peachtree St. NW., Atlanta, Ga. 30303. |
| 7 Illinois, Michigan | 164 West Jackson Blvd., Room 715, Chicago, Ill. 60604. |
| 8 Arkansas, Tennessee, Louisiana, Mississippi, Alabama. | 155 Madison Ave., Rm. 1900, Memphis, Tenn. 38103. |
| 9 North Dakota, South Dakota, Minnesota, Wisconsin. | 822 Marquette Ave., Rm. 300, Minneapolis, Minn. 55402. |

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court or before an administrative tribunal and the assertion of the exemption is deemed necessary, the Department of the Treasury will neither confirm nor deny the existence of the record but shall advise the individual only that no record available to him pursuant to the Privacy Act of 1974 has been identified.

(ii) Requests from individuals for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

(A) Requests for information classified pursuant to Executive Order 11652 require the responsible component of the Department to review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D) and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and made available to the individual. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1). Information which has been exempted pursuant to 5 U.S.C. 552a(j) and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (g)(6)(i) of this section.

(B) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (g)(6)(i) of this section unless the requester shows that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under federal law. In that event, the individual shall be advised of the existence of the information but such information as would identify a confidential source shall be extracted or summarized in a manner which protects the source to the maximum degree possible and the summary extract shall be provided to the requesting individual.

(C) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies the confidential source. Material identifying the confidential sources shall be extracted or summarized in a manner which protects the source to the maximum degree possible and the summary or extract shall be provided to the requesting individual.

(D) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process; but may be made available if no such compromise possibility exists. (See 5 U.S.C. 552a (d)(5), (j) and (k)).

### § 1.27 Procedures for amendment of records pertaining to individuals—format, agency review and appeal from initial adverse agency determination.

(a) *In general.* Subject to the application of exemptions promulgated by the head of each constituent unit, in accordance with § 1.23(c), and subject to § 1.27(f), each constituent unit of the Department of the Treasury, shall in conformance with 5 U.S.C. 552 a(d)(2), permit an individual to request amendment of a record pertaining to him. Any request for amendment of records or any appeal from the initial denial of a request which does not fully comply with the requirements of this section and any additional specific requirements imposed by the constituent unit in the applicable appendix to this subpart will not be deemed subject to the time constraints of paragraph (e) of this section, unless and until amended so as to comply. However, constituent units shall, forthwith advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended. (See 5 U.S.C. 552a (d) and (f).)

(b) *Form of request to amend records.* In order to be subject to the provisions of this section, a request to amend records shall—

| Region—Area within region | Office address |
|---|---|
| 10 Nebraska, Kansas, Iowa, Missouri. | 911 Main St., Suite 2616, Kansas City, Mo. 64105. |
| 11 Oklahoma, Texas | 1401 Elm St., Suite 4500, Dallas, Tex. 75202. |
| 12 Wyoming, Colorado, Utah, New Mexico, Arizona. | 1600 Broadway, Suite 1800, Denver, Colo. 80202. |
| 13 Washington, Oregon, Idaho, Montana, Alaska. | 707 Southwest Washington St., Room 900, Portland, Oreg. 97205. |
| 14 California, Nevada, Hawaii, Guam. | 555 California St., Suite 3939, San Francisco, Calif. 94104. |

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Special Assistant for Public Affairs or his delegate. Requests made by mail should be addressed to:

Special Assistant for Public Affairs, Comptroller of the Currency, Washington, D.C. 20219.

Requests may be delivered personally to the office of the Special Assistant for Public Affairs, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East, SW., Washington, D.C.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office of the Comptroller of the Currency will be made by the First Deputy Comptroller or his delegate. Appeals made by mail should be addressed to:

Special Assistant for Public Affairs, Comptroller of the Currency, Washington, D.C. 20219.

Appeals may be delivered personally to the office of the Special Assistant for Public Affairs, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East SW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Comptroller of the Currency and shall be delivered to such officer at the following location:

Office of the Chief Counsel, Comptroller of the Currency, Sixth Floor, 490 L'Enfant Plaza East SW., Washington, D.C. 20219.

## APPENDIX K—UNITED STATES SAVINGS BOND DIVISION

1. *In general.* This appendix applies to the United States Savings Bond Division. It identifies the location of the public reading room at which United States Savings Bond Division documents are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process.

2. *Public reading rooms.* The public reading room for the United States Savings Bond Division is maintained at the following location:

Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW., Washington, D.C. 20220.

3. *Requests for records.* (a) Initial determinations under 31 CFR 1.5(g) whether to grant requests for records relating to the substantive Savings Bond Program, such as records relating to ownership of and transactions in savings bonds, will be made by the Information Officer of the Bureau of the Public Debt. Requests made by mail should be addressed to:

Information Officer, Bureau of the Public Debt, Department of the Treasury, Washington, D.C. 20226.

Requests may be delivered personally to the office of the Information Officer, Room 200, Warner Building, 1435 G Street NW., Washington, D.C.

(b) Initial determinations under 31 CFR 1.5(g) whether to grant requests for other records of the United States Savings Bond Division, such as personnel records or records relating to the internal management of the Division, will be made by the Director of Public Affairs, United States Savings Bond Division. Requests made by mail should be addressed to:

Director of Public Affairs, U.S. Savings Bond Division, Department of the Treasury, Washington, D.C. 20026.

Requests may be delivered personally to the office of the Director, Room 257, Van Guard Building, 111 20th Street NW., Washington, D.C.

4. *Administrative appeal of determination to deny records.*

(a) Appellate determinations under 31 CFR 1.5(h) with respect to records, access to which has been denied by the Information Officer of the Bureau of the Public Debt, will be made by the Commissioner of the Bureau of the Public Debt. Requests made by mail should be addressed to:

Commissioner, Bureau of the Public Debt, Department of the Treasury, Washington, D.C. 20226.

Requests may be delivered personally to the office of the Information Officer, Room 200, Warner Building, 1435 G Street, NW, Washington, D.C.

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(b) Appellate determinations under 31 CFR 1.5(h) with respect to records, access to which has been denied by the Director of Public Affairs, United States Savings Bond Division, will be made by the National Director, United States Savings Bond Division. Requests made by mail should be addressed to:

National Director, U.S. Savings Bond Division, Department of the Treasury, Washington, D.C. 20026.

Requests may be delivered personally to the office of the Deputy National Director, Room 317, Vanguard Building, 1111 20th Street, NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Commissioner of the Public Debt and shall be delivered to such officer at the following location:

Commissioner, Bureau of the Public Debt, Room 300, Washington Bldg., 1435 G St. NW., Washington, D.C. 20226.

[40 FR 29290, July 11, 1975]

## APPENDIX L—CONSOLIDATED FEDERAL LAW ENFORCEMENT TRAINING CENTER

1. *In general.* This appendix applies to the Consolidated Federal Law Enforcement Training Center. It identifies the location of the public reading room at which Consolidated Federal Law Enforcement Training Center documents are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process.

2. *Public reading rooms.* The public reading room for the Consolidated Federal Law Enforcement Training Center is maintained at the following location:

Library, Room 514, Consolidated Federal Law Enforcement Training Center, 1310 L Street NW., Washington, D.C.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records will be made by the Director, Consolidated Federal Law Enforcement Training Center. Requests made by mail should be addressed to:

Director, Consolidated Federal Law Enforcement Training Center, Department of the Treasury, Washington, D.C. 20220.

Requests may be delivered personally to the Library, Room 514, 1310 L Street NW., Washington, D.C.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(h) with respect to records of the Consolidated Federal Law Enforcement Training Center will be made by the Assistant Secretary (Enforcement, Operations, and Tariff Affairs). Appeals made by mail should be addressed to:

Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 3448, Washington, D.C. 20220.

Requests may be delivered personally to the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Room 3448, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury, or his delegate, and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

## APPENDIX M—OFFICE OF THE ASSISTANT SECRETARY FOR TAX POLICY

1. *In general.* This appendix applies to the Office of the Assistant Secretary for Tax Policy, including the Office of International Tax Counsel, the Office of Tax Analysis, the Office of the Tax Legislative Counsel, and generally the Office of Industrial Economics. It identifies the locations of the public reading rooms at which documents are available for public inspection and copying, the titles of officers designated to make the initial and appellate determinations with respect to requests, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process.

2. *Public reading rooms.* The public reading room for the Office of the Assistant Secretary for Tax Policy is maintained at the following location:

Library, Room 5030, Main Treasury Building Washington, D.C. 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office of the Assistant Secretary for Tax Policy will be made by the Freedom of Information Officer, Office of Tax Legislative Counsel, or

Deputy Tax Legislative Counsel, Room 3064, Main Treasury Building, Washington, D.C. 20220.

Requests for records should be addressed to:

Freedom of Information Officer, Office of the Assistant Secretary for Tax Policy,

Room 4028, Main Treasury Building, 1500
Pennsylvania Avenue NW., Washington,
D.C. 20220.

Requests may be delivered personally to the Freedom of Information Officer at the same address.

4. *Administrative appeal of initial determination to deny records.* Appeals from initial determinations to deny records made by mail should be addressed to:

Assistant Secretary for Tax Policy, Department of the Treasury, Room 3112, Main
Treasury Building, 1500 Pennsylvania
Avenue NW., Washington, D.C. 20220.

Appeals may be delivered personally to the Assistant Secretary for Tax Policy at the same address.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury, or his delegate, and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building,
1500 Pennsylvania Avenue NW., Washington, D.C. 20220.

## Subpart B—Under Other Provisions

### § 1.7 Scope.

The regulations in this subpart concern access to information and records other than under 5 U.S.C. 552. This subpart is applicable only to the Office of the Secretary as defined in § 1.1(a) of this part and the Bureau of Engraving and Printing, the United States Savings Bond Division and the United States Secret Service.

[40 FR 7440, Feb. 20, 1975]

### § 1.8 Records not to be otherwise withdrawn or disclosed.

Except in accordance with this part, or as otherwise authorized, Treasury Department officers and employees are prohibited from making available to any person, not an officer or employee of the Department, and are prohibited from withdrawing from the files, possession or control of the Department, records or duplicates thereof.

[32 FR 9564, July 1, 1967; 32 FR 10059, July 8, 1967]

### § 1.9 Oral information.

(a) Officers and employees of the Department may, in response to requests, provide orally information contained in records of the Department which are determined to be available to the public. If the obtaining of such information requires search of the records, a written request and the payment of the fee for record search set forth in § 1.6 will be required.

(b) Information with respect to activities of the Department not a matter of record shall not be disclosed if the information involves matters exempt from disclosure under 5 U.S.C. 552 or the regulations in this part, or if the disclosure of such information would give the person requesting the information advantages not accorded to other citizens; 31 CFR 0.735-47.

[32 FR 9564, July 1, 1967; 32 FR 10059, July 8, 1967]

### § 1.10 Testimony or the production of records in a court or other proceeding.

(a) Treasury Department officers and employees are prohibited from testifying or otherwise furnishing information obtained as a result of their official capacities or in connection with the transaction of public business, in compliance with a subpoena or other order or demand of any court or other authority without the prior approval of an officer authorized to determine the availability of records under these regulations.

(b) Treasury Department officers and employees are prohibited from furnishing any record in compliance with subpoenas duces tecum or other order or demand of any court or other authority, without the prior approval of an officer authorized to determine the availability of records under the regulations in this part.

(c) In court cases in which the United States or the Treasury Department is not a party, where the giving of testimony is desired, an affidavit by the litigant or his attorney, setting forth the information with respect to which the testimony of such officer or employee is desired, must be submitted before permission to testify will be granted. Permission to testify will, in all cases, be limited to the information set forth in the affidavit or to such portions thereof as may be deemed proper.

(d) Where approval to testify or to furnish records in compliance with a subpoena, order or demand is not given the person to whom it is directed shall, if possible, appear in court or before the other authority and respectfully state his inability to comply in full with the subpoena, order or demand, relying for his action upon this section.

[32 FR 9564, July 1, 1967; 32 FR 10059, July 8, 1967]

### § 1.11 Regulations not applicable to official requests.

The regulations in this part shall not be applicable to official requests of other governmental agencies or officers thereof acting in their official capacities, unless it appears that granting a particular request would be in violation of law or inimical to the public interest. Cases of doubt should be referred for decision to the supervisory official designated in § 1.7.

[32 FR 9564, July 1, 1967, 32 FR 10059, July 8, 1967]

## Subpart C—Records Pertaining to Individuals

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 40 FR 45684, 45711, Oct. 2, 1975, unless otherwise noted.

### § 1.20 Purpose and scope of regulations.

The regulations in this subpart are issued to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The regulations relate to all records maintained by the Department of the Treasury which are identifiable by individual name or identifier and all systems of such records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. They do not relate to those personnel records of Government employees, which are under the jurisdiction of the Civil Service Commission, to the extent such records are subject to regulations issued by such Commission. The regulations apply to all constituent units of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the constituent units or their officials, employees, or records. The regulations set forth the requirements applicable to Department of the Treasury employees maintaining, collecting, using or disseminating records pertaining to individuals. They also set forth the procedures by which individuals may request notification of whether the Department of the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records, request amendment of such records, and appeal any initial adverse determination of any such request. For the convenience of interested persons, the constituent units of the Department of the Treasury may reprint these regulations in their entirety (less any appendices not applicable to the unit in question) in those titles of the Code of Federal Regulations which normally contain regulations applicable to such constituent units. In connection with such republication, and at other appropriate times, constituent units may issue supplementary regulations applicable only to the constituent unit in question, which are consistent with these regulations. In the event of any actual or apparent inconsistency, these Departmental regulations shall govern. Persons interested in the records of a particular constituent unit should therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that constituent unit (see Appendices to this subpart for cross references). The head of each unit is hereby also authorized to substitute other appropriate officials for those designated and correct addresses specified in the appendix to this subpart applicable to his unit. The constituent units of the Department of the Treasury for the purposes of this subpart are:

(a) The Office of the Secretary of the Treasury, which includes the offices of:

(1) The Secretary, including immediate staff;

(2) The Deputy Secretary, including immediate staff;

(3) The Under Secretary for Monetary Affairs, including immediate staff;

(4) The Under Secretary, including immediate staff;

(5) The General Counsel and the Legal Division, except legal counsel to the officer and offices listed in paragraph (a)(6) of this section and the constituent units listed in paragraphs (b) through (e) and (h) through (k) of this section;

(6) The Assistant Secretary (Tax Policy), including immediate staff and all offices reporting to him;

(7) The Assistant Secretary (International Affairs) and all offices reporting to him, including immediate staff;

(8) The Assistant Secretary (Trade, Energy and Financial Resources Policy Coordination) and all offices reporting to him, including immediate staff;

(9) The Assistant Secretary (Economic Policy) and all other offices reporting to him, including immediate staff;

(10) The Fiscal Assistant Secretary, including immediate staff;

(11) The Assistant Secretary (Administration) and all offices reporting to him, including immediate staff;

(12) The Assistant Secretary (Legislative Affairs), including immediate staff;

(13) The Assistant Secretary (Enforcement, Operations and Tariff Affairs), including immediate staff, and the Offices of Law Enforcement, including Interpol (National Central Bureau), Operations, Tariff Affairs and Foreign Assets Control reporting to him;

(14) The Special Assistant to the Secretary (Public Affairs), including immediate staff;

(15) The Special Assistant to the Secretary (Debt Management) and the offices reporting to him, including immediate staff;

(16) The Special Assistant to the Secretary (National Security), including immediate staff;

(17) The Treasurer of the United States, including immediate staff;

(18) The Director of Practice, including immediate staff; and

(19) Persons concerned with the completion of actions under the Economic Stabilization Act of 1970, as amended.

(b) The Internal Revenue Service;

(c) The United States Customs Service;

(d) The United States Secret Service;

(e) The Bureau of Alcohol, Tobacco and Firearms;

(f) The Bureau of Engraving and Printing;

(g) The Bureau of Government Financial Operations;

(h) The Bureau of the Mint;

(i) The Bureau of the Public Debt;

(j) The Office of the Comptroller of the Currency;

(k) The United States Savings Bond Division; and

(l) The Consolidated Federal Law Enforcement Training Center.

For purposes of this subpart, the office of the legal counsel for the constituent units listed in paragraphs (b), (c), (d), (e), (h), (i), (j), and (k) of this section are to be considered a part of such constituent unit. Any office, which is now in existence or may hereafter be established, which is not specifically listed or known to be a constituent of any of those listed above, shall be deemed a part of the Office of the Secretary for the purpose of these regulations.

### § 1.21 Definitions.

(a) The term "agency" means agency as defined in 5 U.S.C. 552(e);

(b) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) The term "maintain" includes maintain, collect, use, or disseminate;

(d) The term "record" means any item, collection, or grouping of information about an individual that is maintained by the Department of the Treasury or any constituent unit thereof, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(e) The term "system of records" means a group of any records under the control of the Department of the Treasury or any constituent unit thereof from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(f) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) The term "routine use" means with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(h) The term "constituent unit" means a bureau or office of the Department of the Treasury as set forth in § 1.20 and in the appendices to these regulations. (See 5 U.S.C. 552a(a)).

### § 1.22 Requirements relating to systems of records.

(a) *In general.* Subject to 5 U.S.C. 552a (j) and (k) and § 1.23(c), each constituent unit shall in conformance with 5 U.S.C. 552a—

(1) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President (See 5 U.S.C. 552a(e)(1)), and

(2) Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs (See 5 U.S.C. 552a(e)(2)).

(b) *Requests for information from individuals.* Subject to 5 U.S.C. 552a (j) and § 1.23(c)(1), each constituent unit of the Treasury shall inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(1) The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D), and

(4) The effects on such individual, if any, of not providing all or any part of the requested information. (See 5 U.S.C. 552a(e)(3)).

(c) *Report on new systems.* Each constituent unit of the Treasury shall provide adequate advance notice to Congress and the Office of Management and Budget through the Legislation Section, Office of the General Counsel of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers. (See 5 U.S.C. 552a(o)).

(d) *Accurate and secure maintenance of records.* Each constituent unit shall—

(1) Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), maintain all records which are used in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination, (see 5 U.S.C. 552a(e)(5);

(2) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552 (see 31 CFR Part 1, Subpart A), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Department of the Treasury purposes. (See 5 U.S.C. 552a (e)(6)), and

(3) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial

harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. (See 5 U.S.C. 552a (e)(10)).

(i) System managers, with the approval of the head of their offices within a constituent unit, shall establish administrative and physical controls, consistent with Department regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that records other than those available to the general public under the Freedom of Information Act, (5 U.S.C. 552), are protected from public view, that the area in which the records are stored is supervised during all business hours and physically secure during nonbusiness hours to prevent unauthorized personnel from obtaining access to the records. Automated systems shall comply with the security standards promulgated by the National Bureau of Standards.

(ii) System managers, with the approval of the head of their offices within a constituent unit, shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to, or dissemination of, records.

(e) *Prohibition against maintenance of records concerning First Amendment rights.* No constituent unit shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment, (e.g. speech), unless the maintenance of such record is—

(1) Expressly authorized by statute, or

(2) Expressly authorized by the individual about whom the record is maintained, or

(3) Pertinent to and within the scope of an authorized law enforcement activity. (See 5 U.S.C. 552a(e)(7)).

(f) *Notification of disclosure under compulsory legal process.* Subject to 5 U.S.C. 552a(j) and § 1.23(c)(1), when records concerning an individual are subpoenaed by a Grand Jury, Court, or quasi-judicial agency, the official served with the subpoena shall make reasonable efforts to assure that notice of any disclosure is provided to the individual. Notice shall be provided within 5 working days of making the records available under compulsory legal process or, in the case of a Grand Jury subpoena, within five days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: the date and authority to which the subpoena is, or was returnable, the name and number of the case or proceeding, and the nature of the information sought and provided. Notice of the issuance of a subpoena is not required if the system of records has been exempted from the notice requirement of 5 U.S.C. 552a(e)(8) and this section, pursuant to 5 U.S.C. 552a(j) and § 1.23(c)(1), by a Notice of Exemption published in the FEDERAL REGISTER. (See 5 U.S.C. 552a(e)(8)).

(g) *Emergency disclosure.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at his last known address within 5 days of the disclosure (excluding Saturdays, Sundays, and legal public holidays). Notification shall include the following information: the nature of the information disclosed, the person or agency to whom it was disclosed, the date of disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure. (See 5 U.S.C. 552a(b)(8)).

### § 1.23 Publication in the Federal Register—annual notices of systems of records, general exemptions, specific exemptions.

(a) *Annual notices of systems of records to be published in the* FEDERAL REGISTER. Each constituent unit shall publish in the FEDERAL REGISTER at least annually a notice of the existence and character of all systems of records it maintains. Such notices are set forth in the "Notices of Records Systems" published by the General Services Administration and referenced in Appendices A through L to this subpart. Subject to 5 U.S.C. 552a (j) and (k) and paragraph (c) of this section, each notice shall include—

(1) The name and location of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(5) The policies and practices of the constituent unit regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the Treasury official who is responsible for the system of records;

(7) The procedures of the constituent unit whereby an individual can be notified at his or her request if the system of records contain a record pertaining to him or her, including reasonable times, places, and identification requirements;

(8) The procedures of the constituent unit whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to him or her contained in the system of records, and how he or she can contest its content; and

(9) The categories of sources of records in the system. (See 5 U.S.C. 552a(e)(4)).

(b) *Notice of new or modified routine uses to be published in the* FEDERAL REGISTER. At least 30 days prior to a new use or modification of a routine use, as published under paragraph (a)(4) of this section, each constituent unit shall publish in the FEDERAL REGISTER notice of such new or modified use of the information in the system and provide an opportunity for interested persons to submit written data, views, or arguments to the constituent units. (See 5 U.S.C. 552a (e)(11)).

(c) *Promulgation of rules exempting systems from certain requirements*—(1) *General exemptions.* In accordance with existing procedures applicable to a Treasury constituent unit's issuance of regulations, the head of each such unit may adopt rules, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e), to exempt any system of records within the constituent unit from any part of 5 U.S.C. 552a and these regulations except subsections (b) (§ 1.24, conditions of disclosure), (c)(1) (§ 1.25, keep accurate accounting of disclosures), (c)(2) (§ 1.25, retain accounting for five years or life of record), (e)(4) (A) through (F) (paragraph (a) of this section, publication of annual notice of systems of records), (e)(6) (§ 1.22(d), accuracy of records prior to dissemination), (e)(7) (§ 1.22(e), maintenance of records on First Amendment rights), (e)(9) (§ 1.28, establish rules of conduct), (e)(10) (§ 1.22(d) (3), establish safeguards for records), (e)(11) (paragraph (c) of this section, publish new intended use), and (i) (§ 1.28(c), criminal penalties) if the systems of records maintained by the constituent unit or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (i) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status; (ii) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (iii) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. (See 5 U.S.C. 552a(j).)

(2) *Specific exemptions.* In accordance with existing procedures applicable to a Treasury constituent unit's issuance of regulations, the head of each such unit may adopt rules, in ac-

cordance with the requirements (including general notice) of 5 U.S.C. 553 (b) (1), (2), and (3), (c), and (e), to exempt any system of records within the unit from 5 U.S.C. 552a (c)(3) (§ 1.25(c)(2), accounting of certain disclosures available to the individual), (d) (§ 1.26(a), access to records), (e)(1) (§ 1.22(a)(1), maintenance of information to accomplish purposes authorized by statute or executive order only), (e)(4)(G) ((a)(7) of this section, publication of procedures for notification), (e)(4)(H) ((a)(8) of this section, publication of procedures for access and contest), (e)(4)(I) ((a)(9) of this section, publication of sources of records), and (f) (§ 1.26, promulgate rules for notification, access and contest), if the system of records is—

(i) Subject to the provisions of 5 U.S.C. 552(b)(1);

(ii) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a and paragraph (a)(1) of this section. If any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(iv) Required by statute to be maintained and used solely as statistical records;

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence;

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(vii) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(3) At the time that rules under this subsection are adopted, the head of the constituent unit shall include in the statement required under 5 U.S.C. 553(c) the reasons why the system of records is to be exempted from a provision of 5 U.S.C. 552a and this part. (See 5 U.S.C. 552a (j) and (k)).

### § 1.24 Disclosure of records to person other than the individual to whom they pertain.

(a) *Conditions of disclosure.* No constituent unit of Treasury shall disclose any record which is contained in a system of records maintained by it by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, or the parent, if a minor, or legal guardian, if incompetent, of such individual, unless disclosure of the record would be—

(1) To those offices and employees of the Department of the Treasury who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552 (Subpart A of this Part);

(3) For a routine use as defined in 5 U.S.C. 552a(a)(7) and § 1.21(g) and as described under 5 U.S.C. 552a(e)(4)(D) and § 1.23(a)(4);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;

(5) To a recipient who has provided the constituent unit with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity,

(i) If the activity is authorized by law; and

(ii) If the head of the agency or instrumentality has made a written request to the Department of the Treasury specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction. (See 5 U.S.C. 552a(b)).

### § 1.25 Accounting of disclosures.

(a) *Accounting of certain disclosures.* Each constituent unit, with respect to each system of records under its control, shall—

(1) Keep an accurate accounting of: (i) The date, nature, and purpose of each disclosure of a record to any person or to an agency made under 5 U.S.C. 552a(b) and § 1.24; and (ii) the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (a)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Inform any person or other agency about any correction or notation of dispute made by the constituent unit in accordance with 5 U.S.C. 552a(d) and § 1.28 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. (See 5 U.S.C. 552(c)).

(b) *Accounting systems.* To permit the accounting required by paragraph (a) of this section, system managers, with the approval of the head of their offices within a constituent unit, shall establish or implement, as soon as possible, but not later than September 27, 1975, a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of the Treasury. Accounting records shall—

(1) Be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of to whom or what agencies records concerning them have been disclosed:

(2) Provide, as a minimum, the identification of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature and purpose of the disclosure; and

(3) Be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Records Service for storage in records centers, in which event, the accounting pertaining to those records, unless

maintained separately, shall be transferred with the records themselves.

(c) *Exemptions from accounting requirements.* No accounting is required for disclosures of records—

(1) To those officers and employees of the Department of the Treasury who have a need for the record in the performance of their duties; or

(2) If disclosure would be required under 5 U.S.C. 552 and Subpart A of this part.

(d) *Access to accounting by individual.* (1) Subject to paragraphs (c) and (d)(2) of this section, each constituent unit shall establish and set forth in the appendix to this subpart applicable to the constituent unit, procedures for making the accounting required under paragraph (a) of this section available to the individual to whom the record pertains and shall thereafter make such accounting available in accordance therewith at the request of the individual. The procedures may require the requester to provide reasonable identification.

(2) Access accountings of disclosure may be withheld from the individual named in the record only if the disclosures were (i) made under 5 U.S.C. 552a(b)(7) and § 1.24(a)(7), or (ii) under a system of records exempted from the requirements of 5 U.S.C. 552a(c)(3) in accordance with 5 U.S.C. 552(a)(j) or (k) and § 1.23(c). (See 5 U.S.C. 552a(c)).

## § 1.26 Procedures for notification and access to records pertaining to individuals—format and fees for request for access.

(a) *Procedures for notification and access.* Each constituent unit shall establish, in accordance with the requirements of 5 U.S.C. 553, and set forth in the appendix to this subpart applicable to such constituent unit procedures whereby an individual can be notified, in response to his request, if any system of records named by the individual contains a record pertaining to him. In addition, such procedures shall set forth the requirements for access by such individual to records which pertain to him. As a minimum such procedures shall specify the times during, and the places at, which access will be accorded, together with such identification as may be required of the individual before access. (See 5 U.S.C. 552a(f) (1), (2) and (3)).

(b) *Access.* Each constituent unit in accordance with the procedures prescribed under paragraph (a) of this section, shall upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. (See 5 U.S.C. 552a(d)(1)).

(c) *Exceptions.* Neither the procedures prescribed under paragraph (a) of this section nor the requirements for access under paragraph (b) of this section shall be applicable to—(1) systems of records exempted pursuant to 5 U.S.C. 552a (j) and (k) and § 1.23(c); (2) information compiled in reasonable anticipation of a civil action or proceeding (See 5 U.S.C. 552a(d)(5)); or (3) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(d) *Format of request.* (1) A request for notification of whether a record exists shall—

(i) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained, or his duly authorized representative (See § 1.34);

(ii) State that it is made pursuant to the Privacy Act, 5 U.S.C. 552a or these regulations, have marked "Privacy Act Request" on the request and on the envelope;

(iii) Give the name of the system or subsystem or categories of records to which access is sought, as specified in the "Notices of Records Systems" published by the General Services Administration and referenced in the appendices to this subpart;

(iv) Describe the nature of the record(s) sought and the approximate dates covered by the record(s);

(v) Provide such identification of the requester as may be specified in the appropriate appendix to this subpart; and

(vi) Be addressed to delivered in person to the office or officer of the constituent unit indicated for the particular system or subsystem or categories of records the individual wishes access to, as specified in the "Notice of Records Systems" published by the General Services Administration and referenced in the appendices to this subpart. Assistance in ascertaining the appropriate constituent unit or in preparing a request for notification may be obtained by a written request to that effect addressed as specified in Appendix A of this part, as the address for the Office of the Secretary for "Request for notification and access to records and accountings of disclosures".

(2) A request for access to records shall, in addition to complying with paragraph (a)(1) (i) through (vi) of this section—

(i) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them;

(ii) If the requester desires to have a copy made, state the firm agreement of the requester to pay the fees for duplication ultimately determined in accordance with (31 CFR § 1.6) Subpart A of this title, unless such fees are waived pursuant to that section by the system manager or other appropriate official as indicated in the appropriate appendix to these regulations; and

(iii) Comply with any other requirement set forth in the applicable appendix to this subpart or the "Notice of Records Systems" applicable to the system in question.

Requesters are hereby advised that any request for access which does not comply with the foregoing requirements and those set forth elsewhere in this Subpart C, will not be deemed subject to the time constraints of this section, unless and until amended so as to comply. However, constituent units shall advise the requester in what respect the request is deficient so that it may be processed. This section applies only to records in being which are contained in a system of records and which are in the possession or control of the constituent unit. (See 5 U.S.C. 552a(d) and (f)).

(e) *Requests for records not in control of constituent unit.* (1) Treasury employees shall make reasonable efforts to assist an oral requester to ascertain to which office or officer a written request should be sent. Where the request is for a record which is not in the possession or control of any constituent unit of the Department of the Treasury, the requester shall be so advised.

(2) Where the record requested was created by a Department or agency other than the Department of the Treasury or a constituent unit thereof and has been classified (e.g. National Defense or Intelligence Information) or otherwise restrictively endorsed (e.g. Civil Service Commission records or FBI reports) by such other Department or agency, and a copy thereof is in the possession of a constituent unit of the Department of the Treasury, that portion of the request shall be referred to the originating agency for determination as to all issues in accordance with the Privacy Act. In the case of a referral to another agency under this paragraph, the requester shall be notified that such portion of his request has been so referred and that he may expect to hear from that agency.

(3) When information sought from a system manager or other appropriate official in the Department of the Treasury includes information furnished by other federal agencies not classified or otherwise restrictively endorsed, the system manager or other appropriate official receiving the request shall consult with the appropriate agency prior to making a decision to disclose or not to disclose the record but the decision as to whether the record shall be disclosed shall be made, in the first instance by the system manager or other appropriate official maintaining the record. (See 5 U.S.C. 552a (d) and (f)).

(f) *Date of receipt of request.* A request for notification or access to records shall be considered to have been received for purposes of this subpart on the date on which the requirements of paragraph (d) of this section have been satisfied. Requests for notification or access to records and any separate agreement to pay shall be stamped or endorsed with the date of receipt by the receiving office. The latest of such stamped dates will be deemed for the purposes of this subpart to be the date of receipt of the request. (See 5 U.S.C. 552a (d) and (f)).

(g) *Notification of determination*—(1) *In general.* Notification of determinations as to notification of whether a record exists or as to whether to grant access to records requested will be made by the officers designated in the appendices to this subpart. The notification of the determination shall be mailed within 30 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section. If it is not possible to respond within 30 days, the designated officer shall inform the requester, stating the reason for the delay (e.g. volume of records requested, scattered location of the records, need to consult other agencies, or the difficulty of the legal issues involved) and when a response will be dispatched. (See 5 U.S.C. 552a (d) and (f)).

(2) *Granting of access.* When it has been determined that the request for access will be granted—(i) and a copy requested; such copy in a form comprehensible to him shall be furnished promptly, together with a statement of the applicable fees for duplication; and (ii) and the right to inspect has been requested, the requester shall be promptly notified in writing of the determination, and when and where the requested records may be inspected. An individual seeking to inspect records concerning himself may be accompanied by another individual of his own choosing. The individual seeking access shall be required to sign the required form indicating that the Department of the Treasury is authorized to discuss the contents of the subject record in the accompanying person's presence. If, after making the inspection, the individual making the request desires a copy of all or a portion of the requested records, such copy in a form comprehensible to him shall be furnished upon payment of the applicable fees for duplication. Fees to be charged are as prescribed by 31 CFR Part 1, Subpart A § 1.6. Fees shall not be charged where they would amount, in the aggregate, to less than $3.00. (See 5 U.S.C. 552a (d) and (f)).

(3) *Requirements for access to medical records.* When access is requested to medical records, including psychological records, the responsible official may determine that such release could have an adverse effect on the individual and that release will be made only to a physician authorized in writing to have access to such records by the individual making the request. Upon receipt of the authorization the physician will be permitted to review the records or to receive copies of the records by mail, upon proper verification of identity. (See 5 U.S.C. 552a (f)(3)).

(4) *Denial of request.* When it is determined that the request for notification of whether a record exists or access to records will be denied (whether in whole or in part or subject to conditions or exceptions), the person making the request shall be so notified by mail in accordance with paragraph (g)(1) of this section. The letter of notification shall specify the city or other location where the requested records are situated (if known), contain a statement of the reasons for not granting the request as made, set forth the name and title or position of the responsible official and advise the individual making the request of the right to file suit in accordance with 5 U.S.C. 552a(g)(1)(B).

(5) *Prohibition against use of 5 U.S.C. 552(b) exemptions.* Exemptions from disclosure under 5 U.S.C. 552(b) (31 CFR Part 1, Subpart A, § 1.2(c)), may not be invoked for the purpose of withholding from an individual any record which is otherwise accessible to such individual under the Privacy Act, 5 U.S.C. 552a and this subpart. (See 5 U.S.C. 552a(q)).

(6) *Records exempt in whole or in part.* (i) When an individual requests notification as to whether a record exists or access to records concerning himself which have been exempted from individual access pursuant to 5 U.S.C. 552a(j) or which have been compiled in reasonable anticipation of a civil action or proceeding in either a

(1) Be made in writing and signed by the person making the request, who must be the individual about whom the record is maintained, or his duly authorized representative;

(2) State that it is made pursuant to the Privacy Act, 5 U.S.C. 552a or these regulations, have marked "Privacy Act Amendment Request" on the request and on the envelope;

(3) Be addressed to the office or officer of the constituent unit specified for such purposes in the "Notices of Records Systems" published by the General Services Administration and referenced in the appendices to this subpart for that purpose; and

(4) Reasonably describe the records which the individual desires to have amended, including, to the best of the requester's knowledge, dates of letters requesting access to such records previously and dates of letters in which notification concerning access was made, if any, and the individual's documentation justifying the correction. (See 5 U.S.C. 552a (d) and (f)).

(c) *Date of receipt of request.* A request for amendment of records pertaining to an individual shall be deemed to have been received for purposes of this subpart when the requirements of paragraph (b) of this section have been satisfied. The receiving office or officer shall stamp or otherwise endorse the date of receipt of the request. (See 5 U.S.C. 552 a (d) and (f)).

(d) *Review of requests to amend records.* Officials responsible for review of requests to amend records pertaining to an individual, as specified in the appendices to this subpart, shall:

(1) Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(2) Promptly, either—(i) Make any correction of any portion thereof which the individual believes and the official agrees is not accurate, relevant, timely, or complete; or (ii) Inform the individual of the refusal to amend the record in accordance with his request, the reason for the refusal, and the name and business address of the officer designated in the applicable appendix to this subpart, as the person who is to review such refusal. (See 5 U.S.C. 552a (d) and (f)).

(e) *Administrative appeal*—(1) *In general.* Each constituent unit shall permit individuals to request a review of initial decisions made under paragraph (d) of this section, when an individual disagrees with a refusal to amend this record. (See 5 U.S.C. 552a (d), (f), and (g)(1)).

(2) *Form of request for administrative review of refusal to amend record.* At any time within 35 days after the date of the notification of the initial decision described in paragraph (d) (2) (ii) of this section, the requester may submit an administrative appeal from such refusal to the official specified in the notification of the initial decision and the appropriate appendix to this subpart. The appeal shall—

(i) Be made in writing stating any arguments in support thereof and be signed by the person to whom the record pertains, or his duly authorized representative;

(ii) Be addressed to and mailed or hand delivered, within 35 days of the date of the initial decision, to the office or officer specified in the appropriate appendix to this subpart and in the notification. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Have clearly marked on the appeal and on the envelope, "Privacy Act Amendment Appeal";

(iv) Reasonably describe the records requested to be amended; and

(v) Specify the date of the initial request to amend records, and the date of the letter giving notification that the request was denied. (See 5 U.S.C. 552a (d) and (f).)

(3) *Date of receipt.* Appeals shall be promptly stamped with the date of their receipt by the office to which addressed and such stamped date will be deemed to be the date of receipt for all purposes of this subpart. The receipt of the appeal shall be acknowledged within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt (unless the determination on appeal is dispatched in 10 days, in which case, no acknowledgement is required) by the responsible official and the requester advised

of the date of receipt established by the foregoing and when a response is due in accordance with this paragraph. (See 5 U.S.C. 552a (d) and (f).)

(4) *Review of administrative appeals from denial of requests to amend records.* Officials responsible for deciding administrative appeals from denials of requests to amend records pertaining to an individual, as specified in the appendices to this subpart shall: complete the review, and notify the requester of the final agency decision within 30 days (exclusive of Saturdays, Sundays and legal public holidays) after the date of receipt of such appeal, unless the time is extended by the head of the agency or his delegate, for good cause shown. If such final agency decision is to refuse to amend the record, in whole or in part, the requester shall also be advised of his right—(i) to file a concise "Statement of Disagreement" setting forth the reasons for his disagreement with the decision which shall be filed within 35 days of the date of the notification of the final agency decision and (ii) to judicial review of the final agency decision under 5 U.S.C. 552a(g)(1)(A). (See 5 U.S.C. 552a (d), (f) and (g)(1)).

(5) *Notation on record and distribution of statements of disagreement.* The system manager is responsible, in any disclosure containing information about which an individual has filed a "Statement of Disagreement", occurring after the filing of the statement under paragraph (e)(4) of this section, for clearly noting any portion of the record which is disputed and providing copies of the statement and, if deemed appropriate, a concise statement of the constituent unit's reasons for not making the amendments requested to persons or other agencies to whom the disputed record has been disclosed. (See 5 U.S.C. 552a (d)(4)).

(f) *Records not subject to correction under the Privacy Act.* The following records are not subject to correction or amendment by individuals:

(1) Transcripts or written statements made under oath; and

(2) Transcripts of Grand Jury proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings; and

(3) Pre-sentence reports comprising the property of the courts but maintained in agency files; and

(4) Records pertaining to the determination, the collection and the payment of federal taxes; and

(5) Records duly exempted from correction by notice published in the FEDERAL REGISTER; and

(6) Records compiled in reasonable anticipation of a civil action or proceeding.

### § 1.28 Training, rules of conduct, penalties for non-compliance.

(a) *Training.* Subject to policy guidance and regulations issued by the Deputy Secretary, who has Departmentwide responsibility therefor, each constituent unit shall institute a training program to instruct employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation or maintenance of any system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, including the appendices thereto, and any other related regulations. Such training shall provide suitable emphasis on the civil and criminal penalties imposed on the Department and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart. (See 5 U.S.C. 552a (e)(9).)

(b) *Rules of conduct.* In addition, to the Standards of Conduct published in Part 0 of this Title, particularly 31 CFR 0.735-44, the following are applicable to employees of the Department of the Treasury (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation or maintenance of any system of records, or in maintaining any records, for or on behalf of the Department, including any constituent unit thereof.

(1) The head of each component of a constituent unit of the Department shall be responsible for assuring that

employees subject to his supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized is maintained without public notice.

(2) Employees of the Department of the Treasury involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record shall:

(i) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(ii) Collect from individuals only that information which is necessary to Department functions or responsibilities, unless related to a system exempted under 5 U.S.C. 552a (j) or (k);

(iii) Collect information, wherever possible, directly from the individual to whom it relates, unless related to a system exempted under 5 U.S.C. 552a(j);

(iv) Inform individuals from whom information is collected about themselves of the authority for collection, the purposes thereof, the use that will be made of the information, and the effects, both legal and practical, of not furnishing the information. (While this provision does not explicitly require it, where feasible, third party sources should be informed of the purposes for which information which they are asked to provide will be used.);

(v) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (A) the individual has volunteered such information for his own benefits; (B) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (C) the activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(vi) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vii) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a or pursuant to a routine use published in the FEDERAL REGISTER;

(viii) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the Department, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 and Subpart A of this part;

(ix) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(x) Assure that the proper Department authorities are aware of any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment Activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(3) Heads of constituent units within the Department or their delegates shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart. (See 5 U.S.C. 552a (e)(9), (i) and (m)).

(c) *Criminal penalties.* (1) The Privacy Act imposes criminal penalties on the conduct of Government officers and employees as follows: Any officer or employee of an agency [which term includes the Department of the Treasury]:

(i) Who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section [5 U.S.C. 552a] or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(ii) Who willfully maintains a system of records without meeting the notice requirements of paragraph (e)(4) of this section [5 U.S.C. 552a]—shall be guilty of a misdemeanor and fined not more than $5,000.

(2) The Act also imposes a collateral criminal penalty on the conduct of any person as follows:

> Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(3) For the purposes of 5 U.S.C. 552a (m), the provisions of paragraph (c) (1) of this section are applicable to Government contractors and employees of such contractors who by contract, entered into after September 27, 1975, operate by or on behalf of the Department of the Treasury a system of records to accomplish a Departmental function. Such contractor and employees are considered employees of the Department of the Treasury for the purposes of 5 U.S.C. 552a (i). (See 5 U.S.C. 552a (i) and (m)).

### § 1.29 Records transferred to Federal Records Center or National Archives of the United States.

(a) *Records transferred to the Administrator of General Services for storage in the Federal Records Center.* Records pertaining to an identifiable individual which are transferred to the Federal Records Center in accordance with 44 U.S.C. 3103 shall for the purposes of the Privacy Act, 5 U.S.C. 552a, be considered to be maintained by the constituent unit which deposited the record and shall be subject to the provisions of the Privacy Act and this subpart. The Administrator of General Services shall not disclose such records except to the Department of the Treasury or to others under rules consistent with the Privacy Act which may be established by the Department of the Treasury or a constituent unit thereof. If such records are retrieved for the purpose of making a determination about an individual, they must be reviewed for accuracy, relevance, timeliness, and completeness.

(b) *Records transferred to the National Archives of the United States*—(1) *Records transferred to National Archives prior to September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government shall be considered to be maintained by the National Archives, and

(i) Shall not be subject to 5 U.S.C. 552a,

(ii) Except, that a statement describing such records (modeled after 5 U.S.C. 552a(e)(4) (A) through (G)) shall be published in the FEDERAL REGISTER.

(2) *Records transferred to National Archives on or after September 27, 1975.* Records pertaining to an identifiable individual transferred to the National Archives as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after September 27, 1975, shall be considered to be maintained by the National Archives, and

(i) Shall not be subject to 5 U.S.C. 552a,

(ii) Except, that a statement describing such records in accordance with 5 U.S.C. 552a(e)(4) (A) through (G) shall be published in the FEDERAL REGISTER and rules of conduct and training in accordance with 5 U.S.C. 552a(e)(9) are to be established by the National Archives. (See 5 U.S.C. 552a(e).)

### § 1.30 Application to system of records maintained by Government contractors.

When a constituent unit contracts for the operation of a system of records to accomplish a Departmental function, the provisions of the Privacy Act, 5 U.S.C. 552a, and this subpart shall be applicable to such system.

The constituent unit shall have responsibility for insuring that the contractor complies with the contract requirements relating to privacy. All such contracts entered into after September 27, 1975, shall contain the standard contract requirements promulgated by the General Services Administration to insure compliance with the Privacy Act of 1974. All such contracts entered into prior to September 27, 1975, shall be amended as soon as feasible to also include such standard requirements. No constituent unit of the Department shall contract or extend an existing contract after September 27, 1975, for the operation of a record system by or on behalf of the agency without the express approval of the Assistant Secretary for Administration. (See 5 U.S.C. 552a(m).)

### § 1.31 Sale or rental of mailing list.

(a) *In general.* An individual's name and address shall not be sold or rented by a constituent unit unless such action is specifically authorized by law.

(b) *Withholding of names and addresses.* This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public. (See 5 U.S.C. 552a(n).)

### § 1.32 Use and disclosure of social security numbers.

(a) *In general.* An individual shall not be denied any right, benefit, or privilege provided by law by a constituent unit because of such individual's refusal to disclose his social security number.

(b) *Exceptions.* The provisions of paragraph (a) of this section shall not apply with respect to—

(1) Any disclosure which is required by Federal statute, or

(2) The disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(c) *Requests for disclosure of social security number.* Any constituent unit which requests an individual to disclose his social security account number shall inform that individual whether—

(1) Disclosure is mandatory or voluntary,

(2) By what statutory or other authority such number is solicited, and

(3) What uses will be made of it. (See section 7 of the Privacy Act of 1974 set forth at 5 U.S.C. 552a, note.)

### § 1.33 Cooperation with Privacy Protection Study Commission.

(a) *Furnishing of information, reports and assistance to Commission.* Each constituent unit is authorized to furnish to the Commission, upon request made by the Chairman, such information, data, reports and such other assistance as the Commission deems necessary to carry out its functions under 5 U.S.C. 552a. A copy of reports made by the constituent units to Congress and the Office of Management and Budget in accordance with § 1.22(c), shall be transmitted to the Commission.

(b) *Confidentiality of information disclosed to the Commission.* Any constituent unit providing information to the Commission shall obtain assurance from the Commission that the information is to be used only for the purpose for which it is provided, and upon completion of that purpose such information shall be destroyed or returned. (See section 5(e)(2)(A) of the Privacy Act of 1974 set forth at 5 U.S.C. 552a, note.)

### § 1.34 Guardianship.

The parent or guardian of a minor or a person judically determined to be incompetent shall, in addition to establishing the identity of the minor or other person he represents, establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage or a court order establishing the guardianship and may thereafter, act on behalf of such individual. (See 5 U.S.C. 552a(h).)

### § 1.35 Information forms.

(a) *Review of forms.* Except for forms developed and used by constituent units, the Assistant Secretary for Administration shall be responsible for reviewing all forms developed and used by the Department of the Treasury to collect information from and about individuals. The heads of constituent units shall each be responsible for the review of forms used by such unit to collect information from and about individuals.

(b) *Scope of review.* The responsible officers shall review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives;

(1) To insure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to, and within the scope of, any authorized law enforcement activity;

(2) To insure that the form or a separate form that can be retained by the individual makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary;

(3) To insure that the form or a separate form that can be retained by the individual states clearly the principal purpose or purposes for which the information is being collected, and summarizes concisely the routine uses that will be made of the information;

(4) To insure that the form or a separate form that can be retained by the individual clearly indicates to the individual the effect in terms of rights, benefits or privileges of not providing all or part of the requested information; and

(5) To insure that any form requesting disclosure of a Social Security Number, or a separate form that can be retained by the individual, clearly advises the individual of the statute or regulation requiring disclosure of the number or clearly advises the individual that disclosure is voluntary and that no consequence will flow from his refusal to disclose it and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) *Revision of forms.* Any form which does not meet the objectives specified in the Privacy Act and in this section, shall be revised to conform thereto. If revision, printing and distribution cannot be accomplished prior to September 27, 1975, a separate statement shall be prepared to accompany each form advising the individual that the form is not in compliance with the Privacy Act and specifying the portions thereof which are not in compliance. The statement shall include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

### § 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

In accordance with 5 U.S.C. 552a (j) and (k) and § 1.23(c), constituent units of the Department of the Treasury exempt the following systems of records from certain provisions of the Privacy Act for the reasons indicated:

#### OFFICE OF THE SECRETARY

#### OFFICE OF THE GENERAL COUNSEL

*Notice exempting certain systems from requirements of the Privacy Act*

(a) *In general.* The General Counsel of the Treasury hereby issues rules exempting the General Counsel's Civil Litigation Records System from the provisions of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a. This system of records contains information or documents related to litigation involving or concerning the Department or its officials, and includes pending, active, and closed files. The records consist of copies of pleadings, investigative reports, information compiled in reasonable anticipation of a civil action or proceeding, legal memoranda, and related correspondence. Pleadings which have been filed with a court or administrative tribunal are matters of public record, and no exemption is claimed as to them. The purpose of the proposed exemptions is to maintain the confidentiality of investigatory material compiled for law enforcement purposes; information compiled in reasonable anticipation of a civil action or proceeding is exempt from access under subsection (d)(5) until the file is closed; thereafter subsection (k)(2) may apply in part to the information. Legal memoranda and related correspondence contain no personal information and are not subject to disclosure under section 552(a). Determinations concerning whether particular information contained in this system is exempt from disclosure will be made at the time a request is received from an individual to gain access to information pertaining to him.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552(a)(k) , and pursuant to the authority vested in the General Counsel by § 1.23(c) of Subpart C of Part 1 of Subtile A of Title 31 of the Code of Federal Regulations.

(c) *Name of system.* Civil Litigation Records.

(d) *Provisions from which exempted.* This system contains records described in 5 U.S.C. 552a(k), the Privacy Act of 1974. Exemption will be claimed for such records only where appropriate from the following provisions, subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a.

(e) *Reasons for claimed exemptions.* Those sections would otherwise require the Department to notify an individual of investigatory materials maintained in a record pertaining to him, permit access to such record, permit requests for its correction (section 552a(d), (e)(4)(G), (H), and (f)); make available to him any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(e)(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Department (section 552a(e)(1)). The records compiled for the prosecution or defense of civil litigation on behalf of the Department or its officials contain investigatory materials compiled for litigation purposes, together with memoranda concerning the applicable law, and related correspondence. The use of investigatory material in court proceedings is governed by due process and statutory procedural requirements. Informing individuals that they are on record in a particular system enables such individuals to learn the nature of the investigatory material and the evidentiary basis for prosecuting or defending legal proceedings to which they are a party; furthermore, the disclosure of certain investigatory material compiled for law enforcement purposes may disclose investigative techniques and procedures so that future law enforcement efforts would be hindered. Access to an accounting of disclosures of such records would have a similar detrimental effort upon the successful prosecution of legal claims. In addition, screening for relevancy to Department purposes, and correction or attempted correction of such materials could require excessive amounts of time and effort on the part of all concerned. Accordingly, the General Counsel finds that the public interest and public policy in maintaining an effective legal services program requires exemption from the stated sections of the Act to the extent that they are applicable to appropriate materials in this system.

## OFFICE OF THE INSPECTOR GENERAL

### *Notice exempting a system of records from the disclosure requirements of the Privacy Act of 1974*

(a) *In general.* The Office of the Inspector General, Department of the Treasury exempts the system of records entitled, "General Allegations and Investigative Records" from certain provisions of the Privacy Act of 1974. The purpose of the exemption is to maintain confidentiality of data obtained from various sources that may ultimately accomplish a statutory or executively ordered purpose.

(b) *Authority:* The authority to issue exemptions is vested in the Office of the Inspector General, as a constituent unit of the Treasury Department by 31 CFR 1.20.

(c) *Exemptions under 5 U.S.C. 552a(j)(2):* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Office of the Inspector General is authorized under Treasury Department Order No. 256 to initiate, organize, direct, and control investigations of any allegations of illegal acts, violations, and any other misconduct, concerning any official or employee of any Treasury Office or Bureau.

(2) To the extent that the exemption under 5 U.S.C. 552a(j)(2) does not apply to the above named system of records, then the exemption under 5 U.S.C. 552a(k)(2) relating to investigatory material compiled for law enforcement purposes is claimed for this system.

(3) The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows:

5 U.S.C. 552a(c)(3) and (4)
5 U.S.C. 552a(d)(1), (2), (3), (4)
5 U.S.C. 552a(e)(1)(2) and (3)
5 U.S.C. 552a(e)(4)(G), (H), and (I)
5 U.S.C. 552a(e)(5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

(d) *Exemptions under 5 U.S.C. 552a(k)(2):* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes.

(2) To the extent that information contained in the above named system has as its principal purpose the enforcement of criminal laws, the exemption for such information under 5 U.S.C. 552a(j)(2) is claimed.

(3) Provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(2) are as follows:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)(1), (2), (3), and (4)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4)(G), (H), and (I)
5 U.S.C. 552a(f)

(e) *Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2):* (1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would alert subjects of an investigation to the existence of the investigation and that such persons are subjects of that investigation. Since release of such information to subjects of an investigation would provide the subjects with significant information concerning the nature of the investigation, it could result in the altering or destruction of documentary evidence, improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(2) 5 U.S.C. 552a(c)(4), (d)(1), (2), (3), and (4), (e)(4)(G) and (H), (f) and (g) relate to an individual's right to be notified of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. This system is exempt from the foregoing provisions for the following reasons: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; co-defendants of a right to a fair trial; constitute an unwarranted invasion of the personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by these sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system of records. The application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of ano-

nymity and confidentiality. This would compromise the ability to conduct investigations, and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. An exemption from the foregoing is needed:

(A) Because it is not possible to detect relevance or necessity of specific information in the early stages of a criminal or other investigation.

(B) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may ultimately be determined to be unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established.

(C) In any investigation the Inspector General may obtain information concerning the violations of laws other than those within the scope of his jurisdiction. In the interest of effective law enforcement, the Inspector General should retain this information as it may aid in establishing patterns of criminal activity, and provide leads for those law enforcement agencies charged with enforcing other segments of criminal or civil law.

(D) In interviewing persons, or obtaining other forms of evidence during an investigation, information may be supplied to the investigator which relate to matters incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privilege under Federal programs. The application of the provision would impair investigations of illegal acts, violations of the rules of conduct, merit system and any other misconduct for the following reasons:

(A) In certain instances the subject of an investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's illegal acts, violations of rules of conduct, or any other misconduct, etc., must be obtained from other sources.

(B) Most information collected about an individual under investigation is obtained from third parties such as witnesses and informers. It is not feasible to rely upon the subject of the investigation as a source for information regarding his activities.

(C) The subject of an investigation will be alerted to the existence of an investigation if an attempt is made to obtain information from the subject. This would afford the individual the opportunity to conceal any criminal activities to avoid apprehension.

(D) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful litigation.

(6) 5 U.S.C. 552a(e)(3) requires that an agency must inform the subject of an investigation who is asked to supply information of:

(A) the authority under which the information is sought and whether disclosure of the information is mandatory or voluntary.

(B) the purposes for which the information is intended to be used,

(C) the routine uses which may be made of the information, and

(D) the effects on the subject, if any of not providing the requested information. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of the investigation as stated in (B) above would provide the subject with substantial information relating to the nature of the investigation and could impede or compromise the investigation.

(ii) If the subject were informed of the information required by this provision, it could seriously interfere with undercover activities by requiring disclosure of undercover agents identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information gathering in investigations authorized by Treasury Department Order No. 256 before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would hinder or adversely affect any present or subsequent investigations.

(7) 5 U.S.C. 552a(e)(5) requires that records be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about an individual. Since the law defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of an investigation it is not possible to determine this prior to collection of the information. Facts are first gathered and then placed into a logical order which objectively proves or disproves criminal behavior on the part of the suspect. Material which may seem unrelated, irrelevant, incomplete, untimely, etc., may take on added meaning as an investigation progresses. The restrictions in this provision could interfere with the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The notice requirement of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(f) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which also is included in another system of records retains the same exempt status as in the system for which an exemption is claimed.

## DIRECTOR OF PRACTICE

### *Notice of rules exempting certain systems from requirements of the Privacy Act*

(a) *In general.* The General Counsel of the Treasury hereby issues rules exempting certain systems of records of the Office of Director of Practice from the provisions of (c)(3), (d)(1), (2), (3) and (4), (e)(1), (e)(4)(G), (H) and (f)(1), (2), (3), (4) and (5) of 5 U.S.C. 552a. The systems of records for which exemptions from the above provisions are claimed are the following:

(1) Treasury—OS—Applicant Appeal Files

(2) Treasury—OS—Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice

(3) Treasury—OS—Derogatory Information (No Action)

(4) Treasury—OS—Disbarments

(5) Treasury—OS—Inventory

(6) Treasury—OS—Resigned Enrolled Agents, and

(7) Treasury—OS—Present Suspensions from Practice before the Internal Revenue Service

The purpose of the proposed exemptions is to maintain the confidentiality of investigatory material compiled for law enforcement purposes; information compiled in reasonable anticipation of a civil action or proceeding is exempt from access under subsection (d)(5) until the file is closed; thereafter subsection (k)(2) may apply in whole or in part to the information. Legal memoranda and related correspondence contain no personal information and are not subject to disclosure under section 552a. Determinations concerning whether particular information contained in this system is exempt from disclosure will be made at the time a request is received from an individual to gain access to information pertaining to him.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(k), and pursuant to the authority vested in the General

Counsel by section 1.23(c) of Subpart C of Part 1 of Subtitle A of Title 31 of the Code of Federal Regulations.

(c) *Names of systems.* (1) Treasury—OS—Applicant Appeal Files

(2) Treasury—OS—Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice

(3) Treasury—OS—Derogatory Information (No Action)

(4) Treasury—OS—Disbarments

(5) Treasury—OS—Inventory

(6) Treasury—OS—resigned Enrolled Agents, and

(7) Treasury—OS—Present Suspensions from Practice before the Internal Revenue Service.

(d) *Provisions from which exempted.* These systems contain records described in 5 U.S.C. 552a(k), the Privacy Act of 1974. Exemption will be claimed for such records only where appropriate from the following provisions, subsections (c)(3), (d) (1), (2), (3) and (4), (e)(1), (e)(4) (G) and (H), and (f) (1), (2), (3), (4) and (5) of 5 U.S.C. 552a.

(e) *Reasons for claimed exemptions.* (1) The Privacy Act of 1974 creates several methods by which individuals may learn of and obtain records containing information on such individuals and consisting of investigatory material compiled for law enforcement purposes. These methods are as follows: subsection (c)(3) allows individuals to discover if other agencies are investigating such individuals; subsections (d)(1), (e)(4)(H) and (f) (2), (3) and (5) establish the ability of individuals to gain access to investigatory material compiled on such individuals; subsections (d) (2), (3) and (4), (e)(4)(H) and (f)(4) presuppose access and enable individuals to contest the contents of investigatory material compiled on these individuals; and subsections (e)(4)(G) and (f)(1) allow individuals to determine whether or not they are under investigation. Because these subsections are variations upon the individuals' ability to ascertain whether their civil or criminal misconduct has been discovered, these subsections have been grouped together for purposes of this notice.

(2)(A) The General Counsel believes that imposition of the requirements of subsection (c)(3), which requires that accountings of disclosures be made available to individuals, would impair the ability of the Office of Director of Practice and other investigative entities to conduct investigations of alleged or suspected violations of the regulations governing practice before the Internal Revenue Service and of civil or criminal laws. Making the accountings of disclosures available to individuals enables such individuals to identify entities investigating them and thereby to determine the nature of the violations of which they are suspected. With such knowledge, individuals would be able to alter their illegal activities, destroy or alter evidence of such activities and seriously impair the successful completion of investigations. For these reasons, the General Counsel claims exemptions from the requirements of subsection (c)(3).

(2)(B) With respect to subsections (d)(1), (e)(4)(H), and (f) (2), (3) and (5), the General Counsel believes that access to investigatory material would prevent the successful completion of investigations. Individuals who gain access to investigatory material involving them discover the nature and extent of the violations of regulations, and of civil and criminal laws, of which they are suspected. By gaining access, such individuals also learn the facts developed during investigations. Knowledge of these matters enables these individuals to destroy or alter evidence which would otherwise have been against them. In addition, knowledge of the facts and the suspected violations gives individuals, who are committing ongoing violations, or who are about to commit violations of regulations, or of civil or criminal laws, the opportunity to temporarily postpone the commission of the violations or to effectively disguise the commission of these violations. Material compiled on investigated individuals reveals investigative techniques and procedures, disclosure of which enables such individuals to structure their illegal activities so as to escape detection. Further, such material may contain, or by its very nature reveal, the identity of confidential sources. When the identities of confidential sources are revealed, they may be subjected to various forms of reprisal. If confidential sources of information are subjected to actual reprisals or fear thereof, they may become reluctant to provide information necessary to identify or prove the guilt of persons who violate regulations, or civil or criminal laws. Further, except in unusual circumstances, the Office of Director of Practice must bring facts or conduct evidencing violation of the regulations governing practice before the Internal Revenue Service to the attention of the suspected violator prior to instituting a proceeding for disciplinary action against him. In addition, the protections afforded by the above-referenced subsections are unnecessary because, unless a suspected violator offers his consent to a disciplinary action against him, no such action can be taken until a hearing before an administrative law judge, at which all applicable due process protections (i.e., notice and opportunity to be heard) are afforded, is held. For the reasons stated in this subparagraph, the General Counsel claims exemptions from the requirements of subsections (d)(1), (e)(4)(H), and (f) (2), (3) and (5).

(2)(C) With respect to subsections (d) (2), (3) and (4), (e)(4)(H), and (f)(4), the General Counsel believes that the imposition of these requirements, which presuppose access and provide for amending records, would impair the ability to conduct investigtions and would be unnecessary for the same reasons stated in the preceding paragraph (2)(B). Those reasons herein are incorporated by reference. Therefore, the General Counsel claims exemptions from the requirements of subsections (d) (2), (3) and (4), (e)(4)(H), and (f)(4).

(2)(D) With respect to subsections (e)(4)(G) and (f)(1), the General Counsel believes that informing individuals that they are the subjects of a particular system or systems of records would impair the ability of the Office of Director of Practice and its agents to successfully complete investigations of suspected or alleged violators of the regulations governing practice before the Internal Revenue Service. Individuals who learn that they are suspected of violating such regulations are given the opportunity to destroy or alter evidence needed to prove the alleged violations. Such individuals may also be able to impair investigations by temporarily suspending or restructuring the activities which place them in violation of said regulations. Further, as noted in preceding paragraph (2)(B) and incorporated by reference herein, the procedural requirements imposed on the Office of Director of Practice by the regulations governing practice before the Internal Revenue Service and by procedural due process safeguards make the protections afforded by subsections (e)(4)(G) and (f)(1) unnecessary. For these reasons, the General Counsel claims exemptions from the requirements of subsections (e)(4)(G) and (f)(1).

(2)(E) Subsection (e)(1) of the Privacy Act of 1974 requires that the Office of Director of Practice maintain in its records only information that is relevant and necessary to accomplish a purpose of the Office required to be accomplished by statute or by executive order of the President. The General Counsel believes that imposition of said requirement would seriously impair the ability of the Office of Director of Practice, its agents and other investigative entities to effectively investigate suspected or alleged violations of regulations and of civil and criminal laws. The Office of Director of Practice does not initiate inquiries into individuals' conduct unless it receives information evidencing violation by such individuals of the regulations governing practice before the Internal Revenue Service. Sources of such information may be unfamiliar with this Office's interpretations of the regulations governing practice before the Internal Revenue Service and, therefore, may not always provide only relevant and necessary information. Frequently, even this Office cannot make determinations of relevance and necessity without further investigation. The nature of investigations conducted for the Office of Director of Practice requires that a wide range of facts and data be provided its legal staff for analysis under applicable rules and regulations. Further, it is often impossible to determine whether or not information is relevant and necessary until an investigation is completed. For these reasons, the General Counsel claims an exemption from the requirement of subsection (e)(1).

### ASSISTANT SECRETARY FOR ADMINISTRATION

The Assistant Secretary for Administration exempts under section (k) of the Privacy Act of 1974, 5 U.S.C. 552a, the Department's Personnel Security Files and Personnel Security Files and Indices from sections (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f) of the Act. The records maintained in the exempt systems of records are of the type described in section (k)(5) of the Act:

> investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

The sections of the Act from which this system of records are exempt are in general those providing for individual access to records. When such access would cause the identity of a confidential source to be revealed, it would impair the future ability of the Treasury Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

In addition, the systems are exempt from section (e)(1) which requires that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory or executively ordered purpose. The Director finds that to fulfill the requirements of section (e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

If any investigations within the scope of section (k)(5) become involved with civil or criminal matters, exemptions from the Act could also be asserted under sections (k)(2) or (j)(2).

### ASSISTANT SECRETARY (ENFORCEMENT, OPERATIONS, AND TARIFF AFFAIRS)

*Notice of rules exempting certain systems from requirements of the Privacy Act*

(a) *In general.* The Assistant Secretary (Enforcement, Operations, and Tariff Affairs) hereby issues rules exempting the International Criminal Police Organization (INTERPOL) criminal investigative records from the provisions of certain subsections of 5 U.S.C. 552a, the Privacy Act of 1974. The purpose of the exemption is to maintain the confidentiality of information compiled for law enforcement purposes.

(b) *Authority.* these rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a (j) and (k) and pursuant to the authority vested in the assistant Secretary (Enforcement, Operations, and Tariff Affairs) by § 1.23(c) of Subpart C of Part 1 of Subtitle A of Title 31 of the Code of Federal regulations.

(c) *Name of System* International Criminal Police Organization (INTERPOL) Criminal Investigative Records.

(d) *Provisions from which exempted.* This system contains records described in 5 U.S.C. 552a (j) and (k), the Privacy Act of 1974. Exemptions will be claimed for such described records only where appropriate from the following provisions of the Privacy Act of 1974: subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4)(G), (H) and (I); (e) (5) and (8); (f) and (g) of 5 U.S.C. 552a.

(e) *Reasons for claimed exemptions.* Those sections would otherwise require the Department to notify an individual of investigatory materials maintained in a record pertaining to him, permit access to such record, permit requests for its correction (section 552a(d), (e)(4) (G), (H) and (f)); make available to him any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(e)(4)(I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Department (section 552a(e)(1)). Disclosure to an individual of investigatory materials pertaining to him would hamper law enforcement by prematurely disclosing the knowledge of illegal activities and the evidentiary bases for possible enforcement actions. Furthermore, the disclosure of certain investigatory material compiled for law enforcement purposes may disclose investigative techniques and procedures, so that future law enforcement efforts would be hindered. Access to an accounting of disclosures of such records would have a similar detrimental effect on law enforcement. In addition, screening for relevancy to Department purposes, and correction or attempted correction of such materials could require excessive amounts of time on the part of all concerned. Accordingly, the Assistant Secretary (Enforcement, Operations, and Tariff Affairs) tentatively finds that the public interest and public policy in maintaining an effective law enforcement program requires exemption from the stated sections of the Act to the extent that they are applicable to appropriate materials in this system.

### EXEMPTION OF FOREIGN ASSETS CONTROL ENFORCEMENT RECORDS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT OF 1974 (P.L. 93-579, 5 U.S.C. 552a.)

The new regulations promulgated by the Office of Foreign Assets Control (as amendments to its Foreign Assets Control Regulations; Transaction Control Regulations; Cuban Assets Control Regulations; and, Rhodesian Sanction Regulations) read as follows:

Pursuant to subsection (k)(2) of 5 U.S.C. 552a, the Privacy Act of 1974, the Enforcement Records of the Office of Foreign Assets Control are hereby exempted from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G-I), and (f) of 5 U.S.C. 552a, as materials which are compiled and maintained for the purpose of conducting and recording investigations of criminal violations of relevant statutes and regulations administered by the Office of Foreign Assets Control. These records contain, among other things, information and evidence which was furnished in confidence by individuals, corporations, partnerships and other entities, Federal, State and local agencies, and by foreign individuals, corporations, partnerships and other entities, and foreign government sources. If it should appear that the individual concerning whom a record is maintained has been or will be denied any right, privilege, or benefit to which he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, except for the maintenance of such material, such material shall be disclosed to such individual, except: (1) to the extent that disclosure would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence; or (2) to the extent that disclosure would reveal the identity of a source who furnished information prior to the effective date of the Privacy Act (September 27, 1975) under an implied promise that the identity of the source would be held in confidence.

## THE INTERNAL REVENUE SERVICE

### NOTICE OF EXEMPT SYSTEMS

The Commissioner of Internal Revenue finds that the orderly and efficient administration of the internal revenue laws necessitates that certain systems of records maintained by the Internal Revenue Service be exempted from certain sections of the Privacy Act of 1974 (88 Stat. 1986).

(a) *Exemptions under 5 U.S.C. 552a (j) (2).* (1) This paragraph applies to the following systems of records maintained by the Internal Revenue Service, for which exemptions are claimed under 5 U.S.C. 552a(j) (2).

| Name of system | No. |
|---|---|
| Strike Force | 42.009 |
| Open and Closed Narcotics Traffickers Files | 42.015 |
| Alphabetical Name File and Index | 46.001 |
| Case Management and Time Reporting System | 46.002 |
| Confidential Informants | 46.003 |
| Electronic Surveillance File | 46.005 |
| Information Gathering and Retrieval System | 46.006 |
| Information Indexing System | 46.007 |
| Information Items | 46.009 |
| Joint Compliance Program | 46.010 |
| National Register | 46.012 |
| Project Files | 46.013 |
| Project Personnel | 46.014 |
| Relocated Witnesses | 46.015 |
| Secret Service Details | 46.016 |
| Strike Force Disclosure Authorization List | 46.018 |
| Tax Practitioner Files | 46.019 |
| Tax Termination File | 46.020 |
| Treasury Enforcement Communications System (TECS) | 46.022 |
| Assault and Threat Investigation Files | 60.001 |
| Bribery Investigation Files | 60.002 |
| Disclosure Investigation Files | 60.004 |
| Chief Counsel Criminal Tax Files | 90.001 |

(2) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of the Internal Revenue Service have as their principal function activities pertaining to the enforcement of criminal laws.

(3) To the extent the exemption under 5 U.S.C. 552a(j)(2) does not apply to any of the above-named systems, then exemptions under 5 U.S.C. 552a(k)(2), relating to investigatory material compiled for law enforcement purposes, are hereby claimed for such systems.

(4) The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(j)(2) are as follows:

5 U.S.C. 552a(c) (3) and (4)
5 U.S.C. 552a(d) (1), (2), (3), and (4)
5 U.S.C. 552a(e) (1), (2), and (3)
5 U.S.C. 552a(e) (4) (G), (H), and (I)
5 U.S.C. 552a(e) (5) and (8)
5 U.S.C. 552a(f)
5 U.S.C. 552a(g)

(5) See paragraph (c) for reasons for the exemptions.

(b) *Exemptions under 5 U.S.C. 552a (k)(2).* (1) This paragraph applies to the following systems of records maintained by the Internal Revenue Service, for which exemptions are claimed under 5 U.S.C. 552a(k)(2):

| Name of system | No. |
|---|---|
| Audit Underreporter Case File | 22.005 |
| Collection Case File | 22.012 |
| Discriminant Function File (DIF) | 22.014 |
| Multiple Refund Files | 22.040 |
| Taxpayer Delinquent Investigation Notice File | 22.057 |
| Wage and Information Document (WAID) File | 22.061 |
| Acquired Property Records | 26.001 |
| Adjustment and Payment Tracer Files | 26.002 |
| Collateral Files | 26.003 |
| Form 2209, Courtesy investigations | 26.006 |
| Form 2990, Miscellaneous Investigations | 26.007 |
| IRS and Treasury Employee Delinquency | 26.008 |
| Litigation Case Files | 26.011 |
| Offer in Compromise (OIC) File | 26.012 |
| (One-Hundred) 100-Percent Penalty Cases | 26.013 |
| Records Being Maintained at the Request of Congressional Committees | 26.015 |
| Returns Compliance Programs (RCP) | 26.016 |
| Seized Property Records | 26.017 |
| Tax Collection Waiver Form 900 Files | 26.018 |
| TDA (Taxpayer Delinquent Accounts) | 26.019 |
| TDI (Taxpayer Delinquency Investigations) Files | 26.020 |
| Transferee Files | 26.021 |
| Delinquency Prevention Programs | 26.022 |
| Administrative File | 42.001 |
| Audit Information Management System (AIMS) | 42.008 |
| Classification and Audit Selection Files | 42.016 |
| Compliance Programs and Projects Files | 42.021 |
| Coordinated Examinations of Large Cases Program | 42.024 |
| International Enforcement Files | 42.017 |
| System for Controlling Returns in Inventory and Production Data (SCRIP) | 42.003 |
| Tax Shelter Program Files | 42.012 |
| Appellate Case Files | 44.001 |
| Information and Correspondence | 46.006 |
| Disclosure to Department of Justice | 48.001 |
| Disclosure to Executive Departments and Congressional Committees | 48.002 |
| Testimony of IRS Employees in Nontax Matters | 48.003 |
| Collateral and Information Requests System | 49.001 |
| Collateral Files and Competent Authority Requests | 49.002 |
| Overseas Compliance Projects System | 49.007 |
| Conduct Investigation Files | 60.003 |
| Enrollee Charge Investigation Files | 60.006 |
| Miscellaneous Information File | 60.007 |
| Special Inquiry (Complaint) Investigation Files | 60.009 |
| Chief Counsel Disclosure Division Case Files | 90.002 |
| Chief Counsel General Legal Services Case Files | 90.004 |
| Chief Counsel General Litigation Case Files | 90.005 |
| Chief Counsel Refund Litigation Division Case Files | 90.006 |
| Chief Counsel Tax Court Case Files | 90.009 |
| Digest Room Files Containing Briefs and Digests of Documents Generated Internally or by the Department of Justice relating to the Administration of the Revenue Laws | 90.010 |
| Legal Case Files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels, Assistant Chief Counsel and their Staff Assistants | 90.013 |
| Reports and Information Retrieval Activity Computer and Microfilm Records | 90.016 |
| Correspondence Files—Inquiries about Enforcement Activities | 00.002 |

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(2) Under 5 U.S.C. 552a (k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes. To the extent that information contained in the above-named systems has as its principal purpose the enforcement of criminal laws, exemption for such information under 5 U.S.C. 552a (j)(2) is hereby claimed.

(3) The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(2) are as follows:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d) (1), (2), (3), and (4)
5 U.S.C. 552a (e)(1)
5 U.S.C. 552a(e)(4) (G), (H), and (I)
5 U.S.C. 552a(f)

(4) See paragraph (c) for reasons for the exemptions.

(c) *Reasons for exemptions.* The following are the reasons for exempting systems of records maintained by the Internal Revenue Service pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c) (1) and (2) to the individual named in the record at his request. The reasons for exempting systems of records from the foregoing provision are as follows:

(i) The release of disclosure accounting would put the subject of an investigation on notice of the existence of an investigation and that such person is the subject of that investigation;

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy;

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating this person and the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a (c)(4), (d)(1), (2), (3), and (4), (e)(4) (G) and (H), (f), and (g). These provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting systems of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive codefendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. In cases where an exemption from this provision has been claimed, the reasons are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting systems of records from the foregoing provision are as follows:

(i) The Internal Revenue Service will limit its inquiries to information which is necessary for the enforcement and administration of tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of a tax audit or other investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(iii) When information is received by the Internal Revenue Service relating to violations of law within the jurisdiction of other agencies, the Service processes this information through Service systems in order to forward the material to the appropriate agencies.

(5) 5 U.S.C. 552a(e)(2). This provision of the Privacy Act requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The reasons for exempting systems of records from the foregoing provisions are as follows:

(i) In certain instances the subject of a criminal investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's criminal activities must be obtained from other sources;

(ii) In a criminal investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to accumulate and verify the evidence necessary for the successful prosecution of persons suspected of violating the criminal laws.

(6) 5 U.S.C. 552a(e)(3). This provision of the Privacy Act requires that an agency must inform the subject of an investigation who is asked to supply information of (A) the authority under which the information is sought and whether disclosure of the information is mandatory or voluntary, (B) the purposes for which the information is intended to be used, (C) the routine uses which may be made of the information, and (D) the effects on the subject, if any, of not providing the requested information. The reasons for exempting systems of records from the foregoing provision are as follows:

(i) The disclosure to the subject of an investigation of the purposes for which the requested information is intended to be used would provide the subject with significant information concerning the nature of the investigation and could result in impeding or compromising the investigation.

(ii) Informing the subject of an investigation of the matters required by this provision could seriously undermine the actions of undercover officers, requiring them to disclose their identity and impairing their safety, as well as impairing the successful conclusion of the investigation.

(iii) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(7) 5 U.S.C. 552a(e)(5). This provision of the Privacy Act requires an agency to maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. The reasons for exempting systems of records from the

foregoing provision are as follows: Since the law defines "maintain" to include the collection of information, compliance with the foregoing provision would prohibit the initial collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of a criminal investigation, it is not feasible or possible to determine completeness, accuracy, timeliness, or relevancy prior to collection of the information. Facts are first gathered and then placed into a cohesive order which objectively proves or disproves criminal behavior on the part of a suspect. Seemingly nonrelevant, untimely, or incomplete information when gathered may acquire new significance as an investigation progresses. The restrictions of the foregoing provision could impede investigators in the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8). This provision of the Privacy Act requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The reasons for exempting systems of records from the foregoing provision are as follows: The notice requirement of the foregoing provision could prematurely reveal the existence of criminal investigations to individuals who are the subject of such investigations.

(d) *Exemption under 5 U.S.C. 552a (k)(4).* (1) This paragraph applies to the following system of records maintained by the Internal Revenue Service, for which exemption is claimed under 5 U.S.C. 552a(k)(4): Statistics of Income—Individual Tax Returns 70.001.

(2) Under 5 U.S.C. 552a(k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is required by statute to be maintained and used solely as statistical records.

(3) The above-named system is maintained under section 6108 of the Internal Revenue Code, which provides that "the Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable".

(4) The reason for exempting the above-named system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(5) The provisions of the Privacy Act of 1974 from which exemption is claimed under 5 U.S.C. 552a(k)(4) are as follows:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d) (1), (2), (3), and (4)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G), (H), and (I)
5 U.S.C. 552a(f)

(e) *Exemptions under 5 U.S.C. 552a (k)(5).* (1) This paragraph applies to the following systems of records maintained by the Internal Revenue Service, for which exemptions are claimed under 5 U.S.C. 552a(k)(5):

| Name of system | No. |
|---|---|
| Personnel Investigation Records | 36.006 |
| Recruiting, Examining and Placement Records | 36.008 |
| Security, Background and Character Investigations Files | 60.008 |
| Chief Counsel General Administrative Systems | 90.003 |
| Employee Recruiting Files Maintained by the Administrative Services Division | 90.011 |
| Management Files Maintained by Administrative Services Division and the Assistant Chief Counsel other than the Civil Service Commission's Official Personnel Files | 90.014 |

(2) Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who

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furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus, to the extent that records in the above-named systems can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

(3) The provisions of the Act from which exemptions are claimed for the above-named systems of records are in general those providing for individual access to records. When such access would cause the identity of a confidential source to be revealed, it would impair the future ability of the Service to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems are to be exempt from 5 U.S.C. 552a(e)(1), which requires that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory or executively ordered purpose. The Service finds that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(4) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a (j)(2) or (k)(2) is hereby claimed.

(5) The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(5) are as follows:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a (d) (1), (2), (3), and (4)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G), (H), and (I)
5 U.S.C. 552a (f)

(f) *Exemption under 5 U.S.C. 552a(k)(6).* (1) This paragraph applies to the following system of records maintained by the Internal Revenue Service, for which exemption is claimed under 5 U.S.C. 552a(k)(6): Recruiting, Examining and Placement Records 36.008

(2) Under 5 U.S.C. 552a(k)(6), the head of any agency may promulgate rules to exempt any system of records that is testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(3) The reason for exempting the above-named system is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

(4) The provisions of the Privacy Act of 1974 from which exemptions are claimed under 5 U.S.C. 552a(k)(6) are as follows:

5 U.S.C. 552a(c)(3)
5 U.S.C. 552a(d)(1), (2), (3), and (4)
5 U.S.C. 552a(e)(1)
5 U.S.C. 552a(e)(4) (G), (H), and (I)
5 U.S.C. 552a (f)

(g) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a (j) or (k) which also is included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

## UNITED STATES CUSTOMS SERVICE

### NOTICE OF EXEMPT SYSTEMS

In accordance with 5 U.S.C. 552a (j) and (k), general notice is hereby given of rulemaking pursuant to the Privacy Act of 1974 by the Commissioner, United States Customs Service, under authority delegated to him by the Secretary of the Treasury. The Commissioner, United States Customs Service, exempts the systems of records identified in the paragraphs below from certain provisions of the Privacy Act of 1974 as set forth in such paragraphs.

a. *General exemptions under 5 U.S.C. 552a(j)(2).* Pursuant to the provisions of 5 U.S.C. 552a(j)(2), the Commission-

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er, United States Customs Service, hereby exempts certain systems of records, maintained by the United States Customs Service, from the provisions of 5 U.S.C. 552a(c) (3) and (4), (d) (1), (2), (3) and (4), (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8), (f) and (g).

1. *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(j)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph a. above except as otherwise indicated below and in the general notice of the existence and character of systems of records which appears elsewhere in the FEDERAL REGISTER:

*Aircraft Registers*
*Automated Index to Central Enforcement Files*
*Cargo Security File*
*CARNET Information System*
*Confidential Source Identification File*
*Currency and Monetary Instrument Reporting System (CMIR)*
*Customs Fugitive Program*
*Customs Licensing and Identification Program (Proposed)* (exemptions applicable solely to the extent necessary to protect identity of confidential sources).
*Investigations Record System*
*Private Aircraft Inspection Reporting System (PAIRS)* (exemptions applicable solely to the extent necessary to protect identity of confidential sources).
*Private Yacht Inspection Reporting System* (exemptions applicable solely to the extent necessary to protect identity of confidential sources).
*Search, Arrest and Seizure Reporting System*
*Seventy-two Hour Archives Search System*
*Telephone Analysis Program (TELAN)*
*Theft Information System (TIS)*
*Treasury Enforcement Communications System (TECS)*
*Vessel Violation Profile System*
*Violators File*

2. *Reasons for exemptions,* (a). 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Customs Service believes that application of these provisions to the above-listed systems of records would give individuals an opportunity to learn whether they are of record either as suspects or as subjects of a criminal investigation; this would compromise the ability of the Customs Service to complete investigations and to detect and apprehend violators of the Customs and related laws in that individuals would thus be able (1) to take steps to avoid detection, (2) to inform co-conspirators of the fact that an investigation is being conducted, (3) to learn the nature of the investigation to which they are being subjected, (4) to learn the type of surveillance being utilized, (5) to learn whether they are only suspects or identified law violators, (6) to continue or resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records, and (7) to destroy evidence needed to prove the violation.

(b). 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f) (2), (3) and (5) enable individuals to gain access to records pertaining to them. The Customs Service believes that application of these provisions to the above-listed systems of records would compromise its ability to complete or continue criminal investigations and to detect and apprehend violators of the Customs and related criminal laws. Permitting access to records contained in the above-listed systems of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways: (1) By discovering the collection of facts which would form the basis for their arrest, (2) by enabling them to destroy contraband or other evidence of criminal conduct which would form the basis for their arrest and, (3) by learning that the criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Granting access to on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning criminal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing law enforcement officer's established investigative tools and procedures. Further, granting access to investigative files and records could disclose the identity of confidential sources and other informers and the nature of the information which they supplied, thereby endangering the life or physical safety of those sources of information by exposing them to possible reprisals for having provided information relating to the criminal activities of those individuals who are the subjects of the investigative files and records; confidential sources and other informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the Customs Service to carry out its mandate to enforce the Customs criminal and related laws. Additionally, providing access to records contained in the above-listed systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding individual's criminal activities, thereby endangering the life or physical safety of those undercover officers or their families by exposing them to possible reprisals.

(c). 5 U.S.C. 552a(d) (2), (3) and (4), (e) (4) (H) and (f) (4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b) above, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Customs Service believes that the reasons set forth in paragraph (b) above are equally applicable to this subparagraph and, accordingly, those reasons are hereby incorporated herein by reference.

(d). 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Customs Service believes that application of this provision to the above-listed systems of records would impair the ability of other law enforcement agencies to make effective use of information provided by the Customs Service in connection with the investigation, detection and apprehension of violators of the criminal laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities, and this could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas or by destroying or concealing evidence which would form the basis for their arrest. In addition, providing violators with accountings of disclosure would alert those individuals to the fact that the Customs Service has information regarding their criminal activities and could inform those individuals of the general nature of that information; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension for violations of the Customs and related criminal laws.

(e). 5 U.S.C. 552a(c) (4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him, and since the above-listed systems of records are proposed to be exempted from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (c) above, the Customs Service believes that this provision should not be applicable to the above-listed systems of records.

(f). 5 U.S.C. 552a(e)(4)(I) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The Customs Service believes that application of this provision to the above-listed systems of records could compromise its ability to conduct investigations and to identify, detect and apprehend violators of the Customs and related criminal laws for the reasons that revealing sources for information could 1) disclose investigative techniques and procedures, 2) result in threatened or actual reprisal directed to informers by the subject under investigation, and 3) result in the refusal of informers to give information or to be candid with criminal investigators because of the knowledge that their identities as sources might be disclosed.

(g). 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Customs Service, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Customs Service; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Customs Service. Further, not all violations of law discovered during a Customs Service criminal investigation fall within the investigative jurisdiction of the Customs Service; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Customs Service should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Customs Service through the conduct of a lawful Customs Service investigation. The Customs Service therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

(h). 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The Customs Service believes that application of this provision to the above-listed systems of records would impair the ability of the Customs Service to conduct investigations and to identify, detect and apprehend violators of the Customs and related criminal laws for the following reasons: (1) most information collected about an individual under criminal investigation is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities, (2) an attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension, (3) in certain instances the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty, and (4) during criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources in order to verify information already obtained.

(i). 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual: the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The Customs Service believes that the above-listed systems of records should be exempted from this provision in order to avoid adverse effects on its ability to identify, detect and apprehend violators of the Customs and related criminal laws. In many cases information is obtained by confidential sources or other informers or by undercover law enforcement officers under circumstances where it is necessary that the true purpose of their actions be kept secret so as to not let it be known by the subject of the investigation or his associates that a criminal investigation is in progress. Further, if it became known that the undercover officer was assisting in a criminal investigation, that officer's life or physical safety could be endangered through reprisal, and, further, under such circumstances it may not be possible to continue to utilize that officer in the investigation. In many cases individuals for personal reasons would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer who they believed was not involved in law enforcement activities. In addition, providing a source of information with written evidence that he was a source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the subject of the investigation. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation would result in a finding that the subject was not involved in any criminal activity.

(j). 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the above-listed systems of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously restrict the necessary flow of information from the Customs Service to other law enforcement agencies where a Customs Service investigation revealed information pertaining to a violation of law which was under the investigative jurisdiction of another agency. In collecting information during the course of a criminal investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear to be inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting on results obtained during criminal investigations. The Customs Service therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(5).

(k). 5 U.S.C. 552a(e)(8) requires that an agency make reasonable efforts to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The

Customs Service believes that the above-listed systems of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence of an ongoing investigation where there is a need to keep the existence of the investigation secret.

(l). 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency refusal to amend a record or to make a review of a request for amendment, for an agency refusal to grant access to a record, for an agency failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual, and for an agency failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The Customs Service believes that the above-listed systems of records should be exempted from this provision to the extent that the civil remedies provided therein may relate to provisions of 5 U.S.C. 552a from which the above-listed systems of records are proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraphs (a) through (k) above are proposed to be inapplicable to the above-listed systems of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the Customs Service believes that application of this provision to the above-listed systems of records would adversely affect its ability to conduct criminal investigations by exposing to civil court action every stage of the criminal investigative process in which information is compiled or used in order to identify, detect, apprehend and otherwise investigate persons suspected or known to be engaged in criminal conduct in violation of the Customs and related laws.

b. *Specific exemptions under 5 U.S.C. 552a(k) (2).* Pursuant to the provisions of 5 U.S.C. 552a(k) (2), the Commissioner, United States Customs Service, hereby exempts certain systems of records, maintained by the United States Customs Service, from the provisions of 5 U.S.C. 552a(c) (3), (d) (1), (2), (3) and (4), (e) (1) and (4) (G), (H) and (I) and (f).

1. *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a (k) (2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph b. above except as otherwise indicated below and in the general notice of the existence and character of systems of records which appears elsewhere in the FEDERAL REGISTER:

*Advice Requests (Legal)*
*Aircraft Registers*
*Aircraft Ownership File*
*Arrest/Seizure/Search Report and Notice of Penalty File*
*Attorney Case File*
*Automated Index to Central Enforcement Files*
*Boarding Report*
*Cargo Security File*
*CARNET Information System*
*Cartmen or Lightermen*
*Case Files (Regional Counsel—Region V)*
*Claims Case File*
*Claims Files (Region VIII)*
*Claims for Automobile Accidents*
*Collection File*
*Confidential Source Identification File*
*Container Station Operator Files* (exemptions applicable solely to the extent necessary to protect identity of confidential sources)
*Cooperating Individual Files*
*Court Case File*
*Court Case Files (Region VIII)*
*Court Docket Records System*
*Currency and Monetary Instrument Reporting System (CMIR)*
*Customhouse Brokers File, Chief Counsel*
*Customhouse Brokers, Headquarters Records*
*Customhouse Brokers Records*
*Customhouse Brokers Records (Headquarters)*
*Customs Fugitive Program*
*Customs Licensing and Identification Program (Proposed)* (exemptions applicable solely to the extent necessary to protect identity of confidential sources).
*Disciplinary Action and Resulting Grievance or Appeal Case Files*
*Disclosure of Information File* (two systems of the same name)
*Disclosure of Information Request Files (Region VIII)*
*Equal Employment Opportunity Program*

*Equal Opportunity Discrimination Complaint Case File*
*Federal Tort Claims Act File* (two systems of the same name)
*Fines, Penalties, and Forfeitures (Supplemental Petitions)*
*Fines, Penalties, and Forfeiture Files (Supplemental Petitions)*
*Fines, Penalties and Forfeiture Records*
*Fines, Penalties and Forfeiture Records (Headquarters)*
*Fines, Penalty, and Forfeiture (FP&F) Record System*
*Florida Boat Registration File*
*Information and Investigative Reports From Other Federal Agencies*
*Information Received File (Patrol File)*
*Information Received File (Patrol Division—New Orleans, La.)* (two systems of the same name)
*Information Received (MOIR) File (San Diego DD)*
*Information Received File (San Juan Patrol)*
*Intelligence Log*
*Internal Security Records System*
*Investigations Record System*
*Justice Court Case File* (two systems of the same name)
*Justice Department Case File*
*Litigation Issue Files*
*Lookout Notice*
*Narcotics Suspect File*
*Notification of Personnel Management Division When An Employee is Placed Under Investigation by the Office of Internal Affairs*
*Patrol Information Data System*
*Patrol Officers Case File*
*Penalty Case File*
*Personal Search Negative* (exemptions applicable solely to the extent necessary to protect enforcement techniques)
*Personal Search, (Negative Results)* (exemptions applicable solely to the extent necessary to protect enforcement techniques)
*Personal Search—Negative (District Director—Mobile, Alabama)* (exemptions applicable solely to the extent necessary to protect enforcement techniques)
*Personal Search—Negative (District Patrol—New Orleans, La. and Mobile, Alabama)* (exemptions applicable solely to the extent necessary to protect enforcement techniques)
*Personal Search File* (exemptions applicable solely to the extent necessary to protect enforcement techniques)
*Personal Search Report* (exemptions applicable solely to the extent necessary to protect enforcement techniques)
*Personnel Action Records System*
*Personnel Case File* (two systems of the same name)
*Personnel Case Files (Region VIII)*
*Private Aircraft Inspection Reporting System (PAIRS)* (exemptions applicable solely to the extent necessary to protect identity of confidential sources).
*Private Yacht Inspection Reporting System* (exemptions applicable solely to the extent necessary to protect identity of confidential sources).
*Regulatory Audits of Customhouse Brokers*
*Search/Arrest/Seizure Report*
*Search, Arrest and Seizure Reporting System*
*Seizure File*
*Seventy-two Hour Archives Search System*
*Suspect File* (two systems of the same name)
*Suspect Persons Index*
*Telephone Analysis Program (TELAN)*
*Theft Information System*
*Tort Claims Act File* (three systems of the same name)
*Tort Claim Records System*
*Treasury Enforcement Communications System (TECS)*
*Treasury Enforcement Communications System Card File*
*Vessel Identification Report*
*Vessel Violation Profile System*
*Violator's Case Files*
*Violators File*
*Warehouse Proprietor Files*

2. *Reasons for exemptions.* (a). 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Customs Service believes that application of these provisions (to those of the above-listed systems of records for which no notification procedures have been provided in the general notice of the existence and character of systems of records which appears elsewhere in the FEDERAL REGISTER) would impair the ability of the Customs Service to successfully complete investigations and inquires of suspected violators of civil and criminal laws and regulations under its jurisdiction. In many cases investigations and inquiries into violations of civil and criminal laws and regulations involve complex and continuing patterns of behavior. Individuals, if informed that they have been identified as suspected violators of civil or criminal laws and regulations, would have an opportunity to take measures to prevent detection of illegal action so as to avoid prosecution or the imposition of civil sanctions. They would also be able to learn the nature and location of the investigation or inquiry and the type of surveillance being utilized, and they would be able to trans-

mit this knowledge to co-conspirators. Finally, violators might be given the opportunity to destroy evidence needed to prove the violation under investigation or inquiry.

(b). 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f) (2), (3) and (5) enable individuals to gain access to records pertaining to them. The Customs Service believes that application of these provisions to the above-listed systems of records would impair its ability to complete or continue civil or criminal investigations and inquiries and to detect and apprehend violators of the Customs and related laws. Permitting access to records contained in the above-listed systems of records would provide violators with significant information concerning the nature of the civil or criminal investigation or inquiry. Knowledge of the facts developed during an investigation or inquiry would enable violators of criminal and civil laws and regulations to learn the extent to which the investigation or inquiry has progressed, and this could provide them with an opportunity to destroy evidence that would form the basis for prosecution or the imposition of civil sanctions. In addition, knowledge gained through access to investigatory material could alert a violator to the need to temporarily postpone commission of the violation or to change the intended point where the violation is to be committed so as to avoid detection or apprehension. Further, access to investigatory material would disclose investigative techniques and procedures which, if known, could enable violators to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing investigators' established and effective investigative tools and procedures. In addition, investigatory material may contain the identity of a confidential source of information or other informer who would not want his identity to be disclosed for reasons of personal privacy or for fear of reprisal at the hands of the individual about whom he supplied information. In some cases mere disclosure of the information provided by an informer would reveal the identity of the informer either through the process of elimination or by virtue of the nature of the information supplied. If informers cannot be assured that their identities (as sources for information) will remain confidential, they would be very reluctant in the future to provide information pertaining to violations of criminal and civil laws and regulations, and this would seriously compromise the ability of the Customs Service to carry out its mission. Further, application of 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f) (2), (3) and (5) to the above-listed systems of records would make available attorney's work product and other documents which contain evaluations, recommendations, and discussions of ongoing civil and criminal legal proceedings; the availability of such documents could have a chilling effect on the free flow of information and ideas within the Customs Service which is vital to the agency's predecisional deliberative process, could seriously prejudice the agency's or the Government's position in a civil or criminal litigation, and could result in the disclosure of investigatory material which should not be disclosed for the reasons stated above. It is the belief of the Customs Service that, in both civil actions and criminal prosecutions, due process will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records and related materials which are to be used in legal proceedings.

(c). 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in subparagraph (b) above, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Customs Service believes that the reasons set forth in subparagraph (b) above are equally applicable to this subparagraph, and, accordingly, those reasons are hereby incorporated herein by reference.

(d). 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Customs Service believes that application of this provision to the above-listed systems of records would impair the ability of the Customs Service and other law enforcement agencies to conduct investigations and inquiries into civil and criminal violations under their respective jurisdictions. Making accountings available to violators would alert those individuals to the fact that the Customs Service or another law enforcement authority is conducting an investigation or inquiry into their activities, and such accountings could reveal the geographic location of the investigation or inquiry, the nature and purpose of the investigation or inquiry and the nature of the information disclosed, and the dates on which that investigation or inquiry was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, transferring their activities to other locations or destroying or concealing evidence which would form the basis for prosecution or the imposition of civil sanctions.

(e). 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Customs Service there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Customs Service; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation or inquiry, and in many cases information which initially appears to be irrelevant and unnecessary may, upon further evaluation or upon continuation of the investigation or inquiry, prove to have particular relevance to an enforcement program of the Customs Service. Further, not all violations of law uncovered during a Customs Service investigation or inquiry fall within the civil or criminal jurisdiction of the Customs Service; in order to promote effective law enforcement it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Customs Service should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction where that information comes to the attention of the Customs Service through the conduct of a lawful Customs Service civil or criminal investigation or inquiry. The Customs Service therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

c. *Specific exemptions under 5 U.S.C. 552a(k)(5).* Pursuant to the provisions of 5 U.S.C. 552a(k)(5), the Commissioner, United States Customs Service, hereby exempts the *Internal Security Records System* from the provisions of 5 U.S.C. 552a (c)(3), (d) (1), (2), (3) and (4), (e) (1) and (4) (G), (H) and (I) and (f). The records maintained in the exempt system of records are of the type described in 5 U.S.C. 552a(k)(5): "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence."

Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of 5 U.S.C. 552a, except where those records contain other information which is exempt under the provisions of 5 U.S.C. 552a(k)(2) for the reasons stated under paragraph b. above.

The sections of 5 U.S.C. 552a from which this system of records is exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Customs Service to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Customs Service believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

If any investigations within the scope of 5 U.S.C. 552a(k)(5) become involved with civil or criminal matters, exemptions from 5 U.S.C. 552a could also be asserted under 5 U.S.C. 552a (k)(2) or (j)(2).

### UNITED STATES SECRET SERVICE

*Notice of rules exempting certain systems from requirements of the Privacy Act*

(a) *In general.* The Director of the U.S. Secret Service hereby issues rules exempting the Criminal Investigation Information System of records, the Non-Criminal Investigation Information System of records, and the Protection Information System of records from the provisions of certain subsections of 5 U.S.C. 552a, the Privacy Act of 1974. The purpose of the exemptions is to maintain the confidentiality of information compiled for the purpose of criminal, non-criminal, and protective investigations.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a (j) and (k) and pursuant to the authority vested in the Director, U.S. Secret Service by paragraph 123(c) of Subpart C of Part 1 of Subtitle A of Title 31 of the Code of Federal Regulations.

(c) *Exempted Systems.* I. U.S. Secret Service Criminal Investigation Information System. The Criminal Investigation Information System is further described in "Notices of Records Systems" published by the General Services Administration.

(1) *Provisions from which exempted.* The Criminal Investigation Information System maintained by the Secret Service contains records described in 5 U.S.C. 552a(j) and (k), the Privacy Act of 1974. Exemptions are claimed for such described records only where appropriate from the following provisions of the Privacy Act of 1974 subsections (c) (3) and (4); (d) (1), (2), (3) and (4); (e) (1), (2), and (3); (e) (4) (G), (H) and (I); (e) (5) and (8); (f) and (g) of 5 U.S.C. 552a.

(2) *Reasons for claimed exemptions.* a. 5 U.S.C. 552a(c)(3): This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c) (1) and (2) to the individual named in the record at his request. The reasons why the Criminal Investigation Information System is exempted from the foregoing provision are as follows:

(i) The release of accounting disclosures would put the subject of a criminal investigation on notice of the existence of an investigation and that he is the subject of that investigation;

(ii) It would provide the subject of a criminal investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. Obviously, the release of such information to the subject of a criminal investigation would provide him with significant information concerning the nature of the investigation and could result in impeding or compromising the efforts of law enforcement personnel to detect and arrest persons suspected of criminal activity;

(iii) Disclosure to the individual of the disclosure accounting after the investigation is closed would alert the individual as to which agencies were investigating him and would put him on notice concerning the scope of his suspected criminal activities and could aid him in avoiding detection and apprehension.

b. 5 U.S.C. 552a (c)(4); (d); (e)(4) (G) and (H); (f) and (g): The foregoing provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to him and access to such records; the agency procedures relating to notification, access and contest of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons why the Criminal Investigation Information System of records is exempted from the foregoing provisions are as follows:

(i) To notify an individual at his request of the existence of records pertaining to him in the Criminal Investigation Information System would inform the individual of the existence of an investigation and that he is the subject of that investigation. This would enable the individual to avoid detection and would further enable him to inform co-conspirators of the fact that an investigation is being conducted;

(ii) To permit access to the records contained in the Criminal Investigation Information System would not only inform an individual that he is or was the subject of a criminal investigation, but would also provide him with significant information concerning the nature of the investigation which might enable him to avoid detection or apprehension;

(iii) To grant access to an on-going or closed criminal investigative file could interfere with Secret Service investigative and enforcement proceedings, deprive co-defendants of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of the personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by such sources, and disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel, informants, witnesses, and other persons supplying information to investigators.

c. 5 U.S.C. a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records, in each system of records. The reasons why the Criminal Investigation Information System of records is exempted from the foregoing provision are as follows:

(i) Revealing sources of information could disclose investigative techniques and procedures;

(ii) Revealing sources of information could result in retaliation and threat of reprisal by the subject under investigation against such sources;

(iii) Revealing sources of information could cause witnesses, informants and others who supply information to criminal investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality;

(iv) Revealing sources of information could result in the refusal of some sources to give full and complete information or to be candid with investigators because of the knowledge that the identity of such sources may be disclosed.

d. 5 U.S.C. 552a(e)(1): This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency. The reasons why the Criminal Investigation Information System of records is exempted from the foregoing provisions are as follows:

(i) In a criminal investigation it is difficult to accurately determine the relevancy and necessity of information during the process of information gathering. Only after the information is evaluated can the relevancy and necessity of such information be ascertained;

(ii) In a criminal investigation, the Secret Service often obtains information concerning the violations of laws other than those within the scope of its criminal investigative jurisdiction. In the interest of effective law enforcement, the Secret Service should retain this information as it may aid in establishing patterns of criminal activity, and provide valuable leads for those law enforcement agencies charged with enforcing other segments of the criminal law;

(iii) In interviewing persons, or obtaining other forms of evidence during a criminal investigation, information will be supplied to the investigator which relates to matters which are ancillary to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information is not readily susceptible to segregation.

e. 5 U.S.C. 552a(e)(2): This provision of the Privacy Act requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's right, benefits and privileges under Federal programs. The reasons why the Criminal Investigation Information System is exempted from the foregoing provision are as follows:

(i) In certain instances, the subject of a criminal investigation is not required to supply information to investigators as a matter of legal right. In those instances, information relating to a subject's criminal activities must be obtained from other sources;

(ii) A requirement that information be collected from an individual who is the subject of a criminal investigation would put the individual on notice of the existence of the investigation and could enable him to avoid detection or apprehension;

(iii) In a criminal investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to accumulate and verify the evidence necessary for the successful prosecution of persons suspected of violating the criminal laws.

f. 5 U.S.C. a(e)(3): This provision of the Privacy Act requires an agency to inform each individual whom it asks to supply information of the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principle purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effect on the individual of not providing the requested information. The reasons why the Criminal Investigation Information System is exempted from the foregoing provision are as follows:

(i) Informing each individual who is asked to supply information in a criminal investigation of the information required under the foregoing provision could inform the individual of the existence of a confidential investigation; reveal the identity of confidential sources of information; and endanger the life or physical safety of confidential informants;

(ii) Informing each individual who is asked to supply information in a criminal investigation of the information required under the foregoing provision could result in an unwarranted invasion of the privacy of individuals who may be the subject of a criminal investigation or who are suspected of engaging in criminal activity;

(iii) Informing each individual who is asked to supply information in a criminal investigation of the information required under the foregoing provision would inhibit such individuals from supplying the requested information and thereby present a serious impediment to the successful investigation and prosecution of violations of the criminal law.

g. 5 U.S.C. 552a(e)(5): This provision of the Privacy Act requires an agency to maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. The reasons why the Criminal Investigation Information System is exempted from the foregoing provisions are as follows:

(i) In gathering information during the course of a criminal investigation it is usually not possible to determine in advance what information is accurate, relevant, timely, and complete. Seemingly nonrelevant or untimely information may acquire new significance as an investigation progresses;

(ii) The restrictions on the maintenance of the records contained in the foregoing provision could impede investigators and intelligence analysts in the exercise of their judgment and discretion in reporting on criminal investigations;

(iii) Compliance with the records maintenance criteria listed in the foregoing provision could require the periodic up-dating of Secret Service criminal investigations to insure that the records maintained in the system remain timely and complete.

h. 5 U.S.C. 552a(e)(8): This provision of the Privacy Act requires an agency to make reasonable efforts to serve notice to an individual when any record on such individual is made available to any person under compulsory legal process becomes a matter of public record. The reasons why the Criminal Investigation Information System is exempted from the foregoing provision are as follows:

(i) The notice requirement of the foregoing provision could impede law enforcement by revealing investigative techniques and procedures;

(ii) The notice requirement of the foregoing provision could reveal the existence of confidential investigations to individuals who are the subjects of such investigations.

i. The foregoing exemptions are claimed for materials maintained in the Criminal Investigation Information System to the extent that such materials contain information and reports described in 5 U.S.C. 552a(j) (2). Further, records maintained in the Criminal Investigation Information System described in 5 U.S.C. 552a(k) are exempted from subsections (c) (3), (d) (1), (2), (3) & (4); (e) (1), (e) (4) (G), (H) and (I) and (f) of 5 U.S.C. 552a for the reasons previously stated.

II. U.S. Secret Service Non-Criminal Investigation Information System. The Non-Criminal Investigation Information System is further described in "Notices of Records Systems" published by the General Services Administration.

(1) Provisions from which exempted: The Non-Criminal Investigation Information System maintained by the Secret Service contains records similar to those described in 5 U.S.C. 552a(k), the Privacy Act of 1974. Exemptions are claimed for such described records where appropriate from the following provisions of the Privacy Act of 1974: subsections (c) (3), (d) (1), (2), (3) & (4); (e) (1); (e) (4) (G), (H), and (I) and (f) of 5 U.S.C. 552(a).

(2) *Reasons for claimed exemptions.* a. 5 U.S.C. 552a(c) (3): This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c) (1) and (2) to the individual named in the record at his request. The reasons why the Non-Criminal Investigation Information System is exempted from the foregoing provision are as follows;

(i) The release of accounting disclosures would put the subject of an investigation on notice of the existence of an investigation and that he is the subject of that investigation;

(ii) It would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. Obviously, the release of such information to the subject of an investigation would provide him with significant information concerning the nature of the investigation and could result in impeding or compromising the efforts of law enforcement personnel to obtain information essential to the successful conclusion of the investigation;

(iii) Disclosure to the individual of the disclosure accounting after the investigation is closed would alert the individual as to which agencies were investigating him; put him on notice concerning the scope of his suspected activities and reveal investigatory techniques and the identity of confidential informants. It could result in an invasion of privacy of private citizens who provide information in connection with a particular investigation.

(3) 5 U.S.C. 552a; (d), (e) (4) (G), (H) and (f): The foregoing provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to him and access to such records and the agency procedures relating to notification, access and contest of the information contained in such records. The reasons why the Non-Criminal Investigation Information System of records is exempted from the foregoing provisions are as follows:

(i) To notify an individual at his request of the existence of records pertaining to him in the Non-Criminal Investigation Information System would inform the individual of the existence of an investigation and that he is the subject of that investigation. This could enable the individual to secrete or destroy evidence essential to the successful completion of the investigation;

(ii) To permit access to the records contained in the Non-Criminal Investigation System would not only inform an individual that he is or was the subject of an investigation, but would also provide him with significant information concerning the nature of the investigation which might enable him to avoid detection or apprehension;

(iii) To grant access to an on-going or closed non-criminal investigative file would interfere with Secret Service investigative and enforcement proceedings; deprive other parties involved in the investigations of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a 3 (e) (4) (I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons why the Non-Criminal Investigation Information System of records is exempted from the foregoing provision are as follows:

(i) Revealing sources of information would disclose investigative techniques and procedures;

(ii) Revealing sources of information would result in retaliation and threat of reprisal by the subject under investigation against such sources;

(iii) Revealing sources of information could cause witnesses, informants and others who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality;

(iv) Revealing sources of information could result in the refusal of some sources to give full and complete information or to be candid with investigators because of the knowledge that the identity of such sources may be disclosed.

(4) 5 U.S.C. 552a(e) (1): This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency. The reasons why the Criminal Investigation Information System of records is exempted from the foregoing provision are as follows:

(i) In a non-criminal investigation it is difficult to determine accurately the relevancy and necessity of information during the process of information gathering. It is only after the information is evaluated that the relevancy and necessity of such information can be ascertained;

(ii) In a non-criminal investigative case, the Secret Service often obtains information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, it is desirable that the Secret Service retain this information since it can aid in establishing patterns of unlawful activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal, regulatory and civil laws;

(iii) In interviewing persons, or obtaining other forms of evidence during an investigation, information will be supplied to the investigator which relates to matters which are ancillary to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information is not readily susceptible to segregation.

(5) The foregoing exemptions are claimed for records maintained in the Non-Criminal Investigation Information System only to the extent that such records contain materials described in subsection (k) of 5 U.S.C. 552a, the Privacy Act of 1974.

III. U.S. Secret Service Protection Information System. The Protection Information System is further described in "Notices of Records Systems" published by the General Services Administration.

(1) *Provisions from which exempted.* The Protection Information System maintained by the Secret Service contains records similar to those described in 5 U.S.C. 552a (j) and (k), the Privacy Act of 1974. The Protection Information System contains material relating to criminal investigations concerned with the enforcement of criminal statutes involving the security of persons and property. Further, this system contains records described in 5 U.S.C. 552a(k) including, but not limited to, classified materials and investigatory material compiled for law enforcement purposes. There are maintained in the Protection Information System, in addition to the categories of records described above, records which are considered necessary to assuring the safety of individuals protected by the Secret Service Pursuant to the provisions of 18 U.S.C. 3056 and Pub. L. 90-331 (5 U.S.C. 522a(k)(3)). Exemptions are claimed for the above described records only where appropriate from the following provisions of the Privacy Act of 1974: subsections (c)(3) and (d) (1), (2), (3) and (4); (e) (1), (2) and (3); (e)(4) (G), (H) and (I); (e) (5) and (8); (f) and (g) of 5 U.S.C. 552a.

(2) *Reasons for claimed exemptions.* a. 5 U.S.C. 552a(c)(3): This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c) (1) and (2) to the individual named in the record at his request. The reasons why the Protection Information System is exempted from the foregoing provision are as follows:

(i) The release of accounting disclosures would put the subject of a protective intelligence file on notice of the existence of an investigation and that he is the subject of that investigation;

(ii) It would provide the subject of a protective intelligence file with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. Obviously, the release of such information to the subject of a protective intelligence file would provide him with significant information concerning the nature of the investigation, and could result in impeding or compromising the efforts of Secret Service personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest;

(iii) Disclosures of the disclosure accounting after the protective intelligence file is closed would alert the individual as to which agencies were investigating him and would put him on notice concerning the scope of the protective intelligence investigation and could aid him in avoiding detection.

b. 5 U.S.C. 552a (c)(4); (d); (e)(4) (G) and (H); (f) and (g): The foregoing provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to him and access to such records; the agency procedures relating to notification; access and contest of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons why the Protection Information System of records is exempted from the foregoing provisions are as follows:

(i) To notify an individual at his request of the existence of records pertaining to him in the Protection Information System would be injurious to the protective intelligence activities of the Secret Service if the existence of files on the subject were even acknowledged. Granting access to the criminal and the unstable person would necessarily lead to knowledge of the sources of Secret Service information and could endanger other enforcement and intelligence operations and confidential sources including co-workers, friends and relatives of the subjects of such records;

(ii) Limitation on access to the materials contained in the Protection Information System is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons the Secret Service is authorized to protect. Without such denial of access the Protection Information System could adversely effect in the poor quality of information available; in compromised confidential sources; in the inability to keep track of persons of protective interest; and from interference with Secret Service protective intelligence activities by individuals gaining access to protective intelligence files. Many of the persons on whom records are maintained in the Protection Information System suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to the Secret Service as a result of two party conversations where it would be impossible to hide the identity of informants. Sources of information must be developed, questions asked and answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access of information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual;

(iii) Permitting access to protective intelligence files would reveal techniques and procedures, not only of Secret Service protective investigations but could reveal the criteria by which protective intelligence subjects are evaluated;

(iv) To notify an individual at his request of the existence of records pertaining to him in the Protection Information System would inform the individual of the existence of an investigation and that he is the subject of protective interest. This would enable the individual to avoid detection and would further enable him to inform co-conspirators of the fact that an investigation is being conducted;

(v) To permit access to the records contained in the Protection Information System would not only inform an individual that he is or was the subject of protective interest, but would also provide him with significant information concerning the nature of any investigation concerning his activities;

(vi) To grant access to current or closed protective intelligence files would interfere with Secret Service investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources; reveal confidential information supplied by such sources; and disclose investigative techniques and procedures, and endanger the life or physical safety of law enforcement personnel, informants, witnesses, and other persons suppling information to investigators.

c. 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons why the Protection Information System of records is exempted from the foregoing provision are as follows:

(i) Revealing sources of information would disclose investigative techniques and procedures;

(ii) Revealing sources of information would result in retaliation and threat of reprisal by the subject of a protective intelligence file;

(iii) Revealing sources of information would cause witnesses, informants and others who supply information to Secret Service investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality;

(iv) Revealing sources of information would result in the refusal of some sources to give full and complete information or to be candid with investigators because of the knowledge that the identity of such sources may be disclosed.

d. 5 U.S.C. 552a(e)(1): This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency. The reasons why the Protection Information System of records is exempted from the foregoing provisions are as follows:

(i) In gathering protective intelligence information it is difficult to determine accurately the relevancy and necessity of information during the process of information gathering. It is only after the information is evaluated that the relevancy and necessity of such information can be ascertained;

(ii) In carrying out protective intelligence responsibilities the Secret Service often obtains information concerning the violation of laws other than those within the scope of its protective intelligence jurisdiction. In the interest of effective law enforcement, it is desirable that the Secret Service retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law;

(iii) During protective intelligence investigations, information will be supplied to the investigator which relates to matters which are ancillary to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information is not readily susceptible to segregation.

e. 5 U.S.C. 552a(c)(2): This provision of the Privacy Act requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs. The reasons why the Protection Information System is exempted from the foregoing provision are as follows:

(i) In certain instances, where the protective intelligence subject is suspected of criminal activity, he is not required to supply information to investigators as a matter of legal right. In those instances, information relating to a subject's criminal activities must be obtained from other sources;

(ii) A requirement that information be collected from an individual who is of protective interest would put the individual on notice of the existence of the intelligence investigation and such knowledge would enable him to avoid detection in the event that the individual attempted to physically harm persons protected by the Secret Service;

(iii) In a protective intelligence investigation where the subject of the investigation is suspected of engaging in criminal activities it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to accumulate and verify the evidence necessary for the successful prosecution of persons suspected of violating the criminal laws.

f. 5 U.S.C. 552a(e)(3): This provision of the Privacy Act requires an agency to inform each individual whom it asks to supply information of the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principle purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effect on the individual of not providing the requested information. The reasons why the Protection Information System is exempted from the foregoing provision are as follows:

(i) Informing each individual who is asked to supply information in a protective intelligence investigation of the information required under the foregoing provision would inform the individual of the existence of a confidential investigation; reveal the identity of confidential sources of information; and endanger the life or physical safety of confidential informants;

(ii) Informing each individual who is asked to supply information in a protective intelligence investigation of the information required under the foregoing provision would result in an unwarranted invasion of the privacy of individuals who may be the subject of a criminal investigation or who are suspected of engaging in criminal activity;

(iii) Informing each individual who is asked to supply information in a protective intelligence investigation of the information required under the foregoing provision would inhibit such individuals from supplying the requested information and thereby present a serious impediment to the success of the Secret Service in carrying out its protective intelligence activities.

g. 5 U.S.C. 552a(e)(5): This provision of the Privacy Act requires an agency to maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. The reasons why the Protection Information System is exempted from the foregoing provisions are as follows:

(i) In gathering information during the course of a protective intelligence investigation it is usually not possible to determine in advance what information is accurate, relevant, timely, and complete. Seemingly nonrelevant or untimely information may acquire new significance as an investigation progresses;

(ii) The restrictions on the maintenance of the records contained in the foregoing provision would impede investigators and intelligence analysts in the exercise of their judgment and discretion in reporting on protective intelligence subjects;

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of Secret Service protective intelligence files to insure that the records maintained in the system remain timely and complete.

h. 5 U.S.C. 552a(e)(8): This provision of the Privacy Act requires an agency to make reasonable efforts to serve notice to an individual when any record on such individual is made available to any person under compulsory legal process becomes a matter of public record. The reasons why the Protection Information System is exempted from the foregoing provision are as follows:

(i) The notice requirement of the foregoing provision could impede Secret Service protective efforts by revealing techniques and procedures;

(ii) The notice requirements of the foregoing provision could reveal the existence of confidential investigations to individuals who are the subjects of such investigations.

i. The foregoing exemptions are claimed for materials maintained in the Protection Information System to the extent that such materials contain information and reports described in 5 U.S.C. 552a(j)(2). Further, records maintained in the Protection Information System described in 5 U.S.C. 552a(k) are to be exempted from subsections (c)(3), (d) (1), (2), (3) and (4); (e)(1), (e)(4) (G), (H) and (I) and (f) of 5 U.S.C. 552a for the reasons previously stated.

## BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

### NOTICE OF SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE PRIVACY ACT OF 1974

In accordance with 5 U.S.C. 552a (j) and (k), general notice is hereby given of rulemaking under the Privacy Act of 1974 by the Director, Bureau of Alcohol, Tobacco and Firearms. The Director, Bureau of Alcohol, Tobacco and Firearms, exempts the systems of records identified in paragraphs (a), (b) and (c) of this section from certain provisions of the Privacy Act of 1974 as set forth in such paragraphs.

### EXEMPTIONS

(a) *General exemptions.* Under the provisions of 5 U.S.C. 552a(j), the Director, Bureau of Alcohol, Tobacco and Firearms, hereby determines that certain provisions of the Privacy Act of 1974 shall not apply to the *Treasury—ATF Criminal Investigation Report System.*

(1) The Privacy Act of 1974 creates several methods by which individuals who are of record in this system of records may discover information collected about their criminal activities. These methods are as follows: subsections (e)(4)(G) and (f)(1) allow individuals to ascertain whether their criminal activities have been recorded; subsections (d)(1), (e)(4)(H), and (f) (2), (3) and (5) establish the ability of individuals to gain access into the investi-

gatory files maintained on their criminal activities; subsections (d) (2), (3) and (4), (e)(4)(H), and (f)(4) presuppose access and further enable individuals to contest the contents of their criminal files; subsection (c)(3) allows individuals to discover if other law enforcement agencies are investigating their criminal activities and subsection (e)(4)(I) discloses the categories of sources of records in the system. Since these subsections are variations upon the criminal subjects' ability to ascertain whether a Federal law enforcement agency has uncovered their criminal misdeeds, these subsections have been grouped together for purposes of this notice.

(A) With respect to subsections (e)(4)(G) and (f)(1), the Bureau of Alcohol, Tobacco and Firearms believes that imposition of these requirements would identify to individuals the fact that they are of record, and in so doing, compromise the ability of ATF to successfully complete an investigation into violations of law. Where individuals have the ability to discover the location and specific character of their investigative records in this system, they will be able to determine the nature of the investigation, the type of surveillance utilized and the precise stage of the investigation into their criminal activities. When individuals can determine that the investigation into their criminal activities has been closed, they are placed on notice that they may safely resume their illegal conduct. For these reasons, ATF seeks exemption of this system from subsections (e)(4)(G) and (f)(1).

(B) With respect to subsections (d)(1), (e)(4)(H) and (f) (2), (3) and (5), the Bureau of Alcohol, Tobacco and Firearms believes that access into criminal investigative files poses present and future dangers on the ability of this agency to effectively enforce the criminal laws committed to its administration. Where individuals may break into an ongoing criminal investigative file they discover the collection of facts which will form the basis of their arrests. Knowledge of these facts enables them to destroy valuable contraband or other evidence of their activities prior to lawful seizure and thereby prevent enforcement proceedings. The ongoing investigative file may reveal that reasonable cause exists to believe that a crime is about to be committed. Disclosure of these facts enable individuals with criminal intent to either postpone the commission of their criminal acts or relocate the scene of the crime to an alternatively acceptable location where Federal agents will not be anticipated. After a criminal investigation has been closed, information in the file nevertheless reveals to the investigated subjects the techniques and procedures utilized by a law enforcement agency. Knowledge of these investigative techniques and procedures by individuals and groups devoted to crime enables them to structure their future operations in such a way as to place these activities beyond discovery until after the crime has been committed. Thus, the ability of Federal agents to prevent crime by apprehension of the criminals at the precise moment of commission of the criminal act is seriously jeopardized.

Disclosure of investigative techniques and procedures could further render the commission of the criminal act itself not susceptible to reconstruction and tracing to its originator. Armed with a knowledge of forensic science and the applied technology of criminal investigation contained in their own files, individuals and groups of individuals devoted to crime have the necessary information to develop counter-techniques which may effectively neutralize established investigative tools and procedures. Additionally, a closed criminal file reveals the identities of informers and undercover agents who have possibly risked their lives and the lives of their families by contributing information concerning the criminal activities of individuals and groups. Oftentimes, friends, family, neighbors and business associates of the subject under investigation, secure in the assured anonymity of a Federal criminal investigation, are not afraid to furnish valuable information relating to the criminal activities of the subjects of investigation. Where criminal subjects have access to the confidential information in their criminal files (with or without the identities of the sources) they can determine from the nature of the information and by process of elimination the identity of those individuals against whom to retaliate. This legitimate fear of reprisal exists in the minds of neighbors, relatives, and coworkers, especially with regard to individuals who are violence-prone or emotionally unstable. As a direct result of this fear of discovery through access to the investigative file, sources close to the criminal subject would decline to be interviewed or otherwise refrain from contact with the Bureau. This absence of information would render the Bureau unable to comply effectively with the mandates of the statutes committed to its administration. For these reasons, ATF seeks exemption of this system from subsections (d)(1), (e)(4)(H) and (f) (2), (3) and (5).

(C) With respect to subsections (d) (2), (3) and (4), (e)(4)(H), and (f)(4), which presuppose access and provide for contest of the content of records contained in this system, the Bureau of Alcohol, Tobacco and Firearms believes that the reasons set forth in subparagraph (B) of paragraph (1) of this subsection are equally applicable to this subparagraph, and are hereby incorporated by reference. For these reasons, ATF seeks exemption of this system from subsections (d) (2), (3) and (4), (e)(4)(H) and (f)(4).

(D) With respect to subsection (c)(3) which provides for making the accounting of disclosures available to the requester, the Bureau of Alcohol, Tobacco and Firearms believes that access to this accounting by a subject under investigation would impair the ability of other law enforcement agencies to utilize information developed by ATF for their investigations into violations of criminal laws not enforced by ATF. Where the interstate criminal activities of individuals or groups span the jurisdictions of several law enforcement agencies, information will be shared by these agencies in their attempts to bring these violators to justice. Disclosure of the accounting will alert such individuals to which agencies are conducting investigations, the geographic locations of such investigations, the nature and purpose of the investigations, and the date during which the investigation received information maintained by ATF. Supplied with this information, individuals or groups may ascertain which of their criminal activities have been discovered and the law enforcement agencies which are in current pursuit. For these reasons, ATF seeks exemption of this system from subsection (c)(3).

(E) With respect to subsection (e)(4)(I), which requires publication of the categories of sources for a record system, the Bureau of Alcohol, Tobacco and Firearms believes that imposition of subsection (e)(4)(I) upon this system would reveal investigative techniques and procedures. For this reason, ATF seeks exemption of this system from subsection (e)(4)(I).

(2) The Privacy Act of 1974 provides, at subsection (e)(1), that an agency may maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by a statute or executive order of the President. The term "maintain" is defined in the Privacy Act to include the initial collection of information. The Bureau of Alcohol, Tobacco and Firearms believes that exemption of this system from subsection (e)(1) is appropriate because not all violations uncovered in an investigation are capable of enforcement by ATF. Where individuals or groups are engaged in a multiplicity of criminal violations, this evidence should be recorded by ATF and transferred to the appropriate law enforcement agencies. This Bureau should not and cannot legally ignore violations of law uncovered in a lawful ATF investigation merely because ATF has no authority to bring the criminal to justice for these non-ATF violations. Where other agencies uncover evidence of ATF violations, this information must be susceptible to collection and preservation by that agency for subsequent use by ATF. Where an investigation by ATF uncovers only ATF violations, information may initially appear irrelevant and unnecessary when collected. However, a later stage of the investigation may uncover additional facts which when placed together with the initially collected irrelevant information, form the basis for reasonable cause to

believe that additional suspects are involved or additional crimes have been or are being committed. Until all facts have been gathered and evaluated at the conclusion of the investigation it may not be possible to determine relevancy and necessity. For these reasons, ATF seeks exemption of this system from subsection (e)(1).

(3) The Privacy Act of 1974 provides at subsection (e)(2) that an agency must collect information to the greatest extent practicable directly from the subject individual. The Bureau of Alcohol, Tobacco and Firearms believes that this system should be exempted from subsection (e)(2) because most information gathered upon a subject under investigation is obtained from third parties and witnesses. There is a minimal degree of practicability in contacting a criminal subject for purposes of seeking information as to his criminal activities. Such contact alerts the individual that he is under investigation and affords him opportunity to conceal his criminal activities or otherwise avoid detection or apprehension. In certain instances, the subject of a criminal investigation is not required to supply information to investigators as a matter of legal right. Law violators seldom give self-incriminatory information about their involvement in criminal activities. In those instances, information relating to the subject's criminal activities must be obtained from other sources. For these reasons, ATF seeks exemption of this system from subsection (e)(2).

(4) The Privacy Act of 1974 provides at subsection (e)(3) that each individual must be informed of the authority, principle purposes, and routine uses and effects on the individual when requested to provide information. The Bureau of Alcohol, Tobacco and Firearms believes that this system should be exempted from subsection (e)(3). When information is obtained by undercover officers, conformity to (e)(3) discloses their identity as agents of a law enforcement authority and thereby impairs their physical safety as well as the successful conclusion of the investigation. When presented with a written statement complying with (e)(3) by special agents acting in undercover capacity, the individual may not thereafter be completely open with such agents. For these reasons, ATF seeks exemption of this system from subsection (e)(3).

(5) The Privacy Act of 1974 provides at subsection (e)(5) that an agency maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since the law defines "maintain" to include collection of information, the Bureau of Alcohol, Tobacco and Firearms believes that this system should be exempt from subsection (e)(5) because it would prohibit the initial collection of any data not shown to be accurate, relevant, timely or complete at the moment of its collection. In gathering information during the course of a criminal investigation it is not feasible or possible to determine completeness, accuracy, timeliness or relevancy prior to collection of the information. Facts are first gathered then placed into a cohesive order which objectively proves or disproves criminal behavior on the part of a suspect. Seemingly irrelevant, untimely and incomplete information when gathered may acquire new significance as an investigation progresses. The restrictions of (e)(5) could impede special agents in the preparation of a complete investigative report. For these reasons, ATF seeks exemption of this system from subsection (e)(5).

(6) The Privacy Act of 1974 provides, at subsection (e)(8), that an agency must make reasonable efforts to serve notice on an individual when his records are made available pursuant to compulsory legal process, when such process becomes a matter of public record. Such a requirement would impose unnecessary and unusual administrative demands on the Bureau of Alcohol, Tobacco and Firearms by requiring a record system to follow up on legal process emanating from court proceedings to which ATF is not a party. The Bureau of Alcohol, Tobacco and Firearms believes the duty of serving notice in such a case properly rests with the moving party who seeks

disclosure by utilization of the court's compulsory legal process. Further, in most cases where an individual's criminal records have been disclosed pursuant to compulsory legal process, the individual who is the subject of the records will be a party to the proceedings and will have actual notice of the disclosure. For these reasons, ATF seeks exemption of this system from subsection (e)(8).

(7) The Privacy Act of 1974 provides, at subsection (g), civil remedies for agency failure to grant access, agency failure to amend records, agency failure to maintain accurate, relevant, timely and complete records and agency failure to comply with provisions of the Privacy Act which have an adverse effect on an individual. The Bureau of Alcohol, Tobacco and Firearms believes that this system should be exempted from subsection (g) because the civil remedies provided in this subsection apply to provisions in the Privacy Act which have been exempted from application to this system by virtue of this notice. Since these provisions are not intended to apply to this system, there should be no corresponding civil penalty for failure to comply with the requirements of these sections due to exercise of the exemption authority. ATF believes that application of this subsection to this system of records would impair ATF's ability to conduct investigations into the criminal behavior of suspects because every step in the investigation process in which information is compiled for prosecution purposes would be susceptible to civil action under this subsection. For these reasons, ATF seeks exemption of this system from subsection (g).

(b) *Specific exemptions under § 552a(k)(2).* Under the provisions of 5 U.S.C. 552a(k)(2), the Director, Bureau of Alcohol, Tobacco and Firearms, hereby determines that certain provisions of the Privacy Act of 1974 shall not apply to the *Treasury—ATF—Regulatory Enforcement Record System,* the *Treasury—ATF—Technical and Scientific Services Record System,* and that portion of the *Treasury—ATF—Internal Security Record System* relating to "conduct of employees" and "integrity of employees" records.

(1) The Privacy Act of 1974 creates several methods by which individuals may discover records containing information on such individuals and consisting of investigatory material compiled for law enforcement purposes. These methods are as follows: subsection (c)(3) allows individuals to discover if other agencies are investigating such individuals; subsections (d)(1), (e)(4)(H), and (f) (2), (3) and (5) establish the ability of individuals to gain access to investigatory material compiled on such individuals; subsections (d) (2), (3) and (4), (e)(4)(H) and (f)(4) presuppose access and enable individuals to contest the contents of investigatory material compiled on these individuals; and subsections (e)(4)(G) and (f)(1) allow individuals to determine whether or not they are under investigation. Since these subsections are variations upon the individuals' ability to ascertain whether their civil or criminal misdeeds have been discovered, these subsections have been grouped together for purposes of this notice.

(A) The Bureau of Alcohol, Tobacco and Firearms believes that imposition of the requirements of subsection (c) (3), requiring accounting of disclosures be made available to individuals, would impair the ability of ATF and other investigative entities to conduct investigations of alleged or suspected violations of civil or criminal laws. Making the accounting of disclosures available identifies to individuals which investigative entities are investigating the individuals, the nature of the violations of which they are suspected, and the purpose for the exchange of information. Supplied with this information, the individuals concerned would be able to alter their ongoing and future illegal activities, conceal or destroy evidentiary materials and documents, and otherwise seriously impair the successful completion of investigations. Further, where individuals learn the geographic location and identity of the investigative entities which are interested in them, such individuals are able to move the site of their illegal activities or become secure in the knowledge that their illegal activities have not been detected in particular geographic locations. For these reasons, ATF seeks an exemption from the requirements of subsection (c)(3).

(B) With respect to subsections (d)(1), (e)(4)(H), and (f) (2), (3) and (5), the Bureau of Alcohol, Tobacco and Firearms believes that access into investigatory material would prevent the successful completion of ongoing investigations. Individuals who gain access to investigatory material compiled on them discover the nature and extent of the violations of civil or criminal laws which they are suspected or alleged to have committed. By gaining access, such individuals also learn the facts developed during an investigation. Knowledge of the facts and the nature and extent of the suspected or alleged violations enables these individuals to destroy materials or documents which would have been used as evidence against them. In addition, knowledge of the facts and the suspected violations gives individuals, who are committing ongoing violations or who are about to commit violations of civil or criminal laws, the opportunity to temporarily postpone the commission of the violations or to effectively disguise the commission of these violations. Access to material compiled on investigated individuals reveals investigative techniques and the procedures followed in conducting investigations. Disclosure of these techniques and procedures enables individuals who intend to violate civil or criminal laws to structure their future illegal activities in such a way that they escape detection. Investigative material may contain the identity of confidential sources of information. Individuals who gain access to investigatory material compiled on them learn the identity of these confidential sources. Even where the name of the source is not revealed, investigated individuals may learn the identity of confidential sources by the process of elimination or by the very nature of the information contained in the files. Where the identity of confidential sources has been revealed, they may be subject to various forms of reprisal. If confidential sources of information are subjected to reprisals or the fear of reprisals, they would become reluctant to provide information necessary to identify or prove the guilt of individuals who violate civil or criminal laws. Without the information that is often supplied by confidential sources, the ability of investigative entities would be seriously impaired. For the reasons stated in this paragraph, ATF seeks exemption from the requirements of subsections (d)(1), (e)(4)(H), and (f) (2), (3) and (5).

(C) With respect to subsections (d)(2), (3) and (4), (e) (4) (H), and (f) (4), the Bureau of Alcohol, Tobacco and Firearms believes that the imposition of these requirements, which presuppose access and provide for amending records, would impair ATF's ability to conduct investigations for the same reasons stated in the preceding paragraph (b)(1)(B), and are incorporated by reference herein. Therefore, ATF seeks exemption from the requirements of subsections (d) (2), (3) and (4), (e)(4)(H), and (f)(4).

(D) With respect to subsections (e)(4)(G) and (f)(1), the Bureau of Alcohol, Tobacco and Firearms believes that informing individuals that they are of record would impair the ability of ATF to successfully complete the investigations of suspected or alleged violators of civil or criminal laws. Individuals, who are informed that they have been identified as suspected violators of civil or criminal laws, are given the opportunity to destroy evidence or other material needed to prove the alleged violations. Such individuals would also be able to impair investigations by temporarily suspending ongoing illegal activities or by restructuring intended illegal activities. Informing individuals that they are of record in a particular system of records enables such individuals to learn the nature of the investigation, the character of the investigatory material and the specific civil or criminal laws they are suspected of violating. For these reasons, ATF seeks exemption from the requirements of subsections (e)(4)(G) and (f)(1).

(2) Subsection (e) (1) of the Privacy Act of 1974 requires that ATF maintain in its records only information that is relevant and necessary to accomplish a purpose of ATF required to be accomplished by statute or by executive order of the President. The Bureau of Alcohol, Tobacco and Fire-

arms believes that imposition of such requirement would seriously impair the ability of ATF and other investigative entities to effectively investigate suspected or alleged violations of civil or criminal laws. Where individuals are engaged in a broad variety of violations, if ATF were only to collect information necessary and relevant to laws under ATF's jurisdiction, ATF would be unable to perform one of its functions, i.e., working with other governmental agencies which have similar jurisdictional concerns. Additionally, it is often impossible to determine whether or not information is relevant and necessary until the investigation is completed. When initially collected, information may appear irrelevant or immaterial. However, when this information is placed together with additional data gathered at a later stage of the investigation, the initially collected irrelevant information may form the basis for reasonable cause to believe additional violations of law are present or additional suspects are involved. Until all facts have been gathered and evaluated it may not be possible to determine relevancy and materiality. For these reasons, ATF seeks an exemption from the requirement of subsection (e) (1).

(c) *Specific exemptions under § 552a (k) (5).* The Director, Bureau of Alcohol, Tobacco and Firearms exempts under § (k) of the Privacy Act of 1974, 5 U.S.C. 552a, that portion of the *Treasury—ATF—Internal Security Record System* relating to "security clearances for employees" records, and the *Treasury— ATF—Personnel Record System* from sections (c)(3), (d) (1) through (4), (e)(1), (e)(4)(G) through (e)(4)(I), and (f) of the Act. The records maintained in the exempt systems of records are of the type described in section (k)(5) of the Act: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this proposed exemption and are subject to all the requirements of the Privacy Act.

The sections of the Act from which this system of records are exempt are in general those providing for individual access to records. When such access would cause the identity of a confidential source to be revealed, it would impair the future ability of the Treasury Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

In addition, the systems are exempt from section (e)(1) which requires that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory or executively ordered purpose. The Director finds that to fulfill the requirements of section (e) (1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

If any investigations within the scope of section (k)(5) become involved with civil or criminal matters, exemptions from the Act could also be asserted under sections (k)(2) or (j)(2).

(d) *Application of exemptions to records exempt in whole or in part.* (1) When an individual requests records about himself which have been exempted from individual access pursuant to 5 U.S.C. 552a(j) or which have been compiled in reasonable anticipation of a civil action or proceeding in either a court or before an administrative tribunal, the Bureau of Alcohol, Tobacco and Firearms will neither confirm nor deny the existence of the record but shall advise the individual only that no record available to him pursuant to the Privacy Act of 1974 has been identified.

(2) When there is a request for information which has been classified by ATF pursuant to Executive Order 11652 and Treasury Order 160, ATF will review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D), and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified. After declassification, the information shall be made available to the individual, unless an exemption is claimed. If the information continues to warrant classification, the provisions of EO 11652 shall apply.

(3) Requests for information which have been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (d)(1) of this section unless a review of the information indicates that the information has been used to deny the individual any right, privilege, or benefit for which he is eligible or to which he would otherwise be entitled under federal law. In that event, the individual shall be advised of the existence of the information and shall be provided the information except to the extent it would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(4) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent it would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

(5) Even though the exemptions described in paragraphs (a), (b) and (c) of this section may be fully applicable, the Bureau may, if not precluded by law, elect under the circumstances of a particular case not to apply the exemption; or to exempt only a part. The fact that the exemption is not applied by the Bureau in a particular case has no precedential significance as to the application of the exemption to such matter in other cases. It is merely an indication that in the particular case involved, the Bureau finds no compelling necessity for applying the exemption to such matter. Where the Bureau has elected not to apply an exemption, in whole or in part, Appendix E of 31 CFR Part 1, Subpart C, relating to ATF's notice, access and amendment procedures shall apply to the records requested only to the extent that the exemption was not asserted.

## BUREAU OF ENGRAVING AND PRINTING, DEPARTMENT OF THE TREASURY

### *Notice of rules exempting certain systems from requirements of the Privacy Act*

(a) *In general.* The Director of the Bureau of Engraving and Printing exempts the Office of Security Investigative Files from the provisions of certain subsections of 5 U.S.C. 552a, the Privacy Act of 1974. The purpose of the exemptions is to maintain the confidentiality of information compiled for the purpose of criminal, non-criminal, employee suitability and security investigations.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(k) and pursuant to the authority vested in the Director, Bureau of Engraving and Printing.

(c) *Exempted System.* Bureau of Engraving and Printing, Office of Security, Investigative Files.

(1) *Provisions from which exempted.* The Investigative Files maintained by the Office of Security contain records described in 5 U.S.C. 552a(k)(2), the Privacy Act of 1974. Exemptions will be claimed for such described records only where appropriate from the following provisions of the Privacy Act of 1974: Subsections (c)(3); (d) (1), (2), (3), (4); (e)(1); (e)(4) (G), (H), and (I); and (f) of 5 U.S.C. 552a.

(2) *Reasons for claimed exemptions.* a. 5 U.S.C. 552a(c)(3): This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c) (1) and (2) to the individual named in the Investigative Files. The reasons why these files are exempted from the foregoing provision are as follows:

(i) The release of accounting disclosures would put the subject of a security investigation on notice of the existence of an investigation and that he is the subject of that investigation;

(ii) It would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. Obviously, the release of such information to the subject of a security investigation would provide him with significant information concerning the nature of the investigation and could result in impeding or compromising the efforts of Bureau Security personnel to detect and report persons suspected of illegal, unlawful, or unauthorized activity;

(iii) Disclosure to the individual of the disclosure accounting after the investigation is closed would alert the individual as to which agencies were investigating him and would put him on notice concerning the scope of his suspected improper activities and could aid him in avoiding detection and apprehension.

b. 5 U.S.C. 552a(d) (1), (2), (3), (4); (e)(4) (G) and (H); and (f): The foregoing provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to him and access to such records; the agency procedures relating to notification, access and contest of the information continued in such records. The reasons why the Investigative Files are exempted from the foregoing provisions are as follows:

(i) To notify an individual at his request of the existence of records pertaining to him in the Investigative Files would inform the individual of the existence of an investigation and that he is the subject of that investigation. This would enable the individual to avoid detection and would further enable him to inform co-conspirators of the fact that an investigation is being conducted;

(ii) To permit access to the records contained in the Investigative Files would not only inform an individual that he is or was the subject of a security investigation, but would also provide him with significant information concerning the nature of the investigation which might enable him to avoid detection or apprehension;

(iii) To grant access to an on-going or closed investigative file could interfere with Office of Security investigative proceedings, disclose the identity of confidential sources and reveal confidential information supplied by such sources, and disclose investigative techniques and procedures, or endanger the life or physical safety of Office of Security personnel, informants, witnesses, and other persons supplying information to investigators.

c. 5 U.S.C. a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons why the Investigative Files are exempted from the foregoing provision are as follows:

(i) Revealing sources of information could disclose investigative techniques and procedures;

(ii) Revealing sources of information could result in retaliation and threat of reprisal by the subject under investigation against such sources;

(iii) Revealing sources of information could cause witnesses, informants and others who supply information to Office of Security investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality;

(iv) Revealing sources of information could result in the refusal of some sources to give full and complete information or to be candid with investigators because of the knowledge that the identity of such sources may be disclosed.

d. 5 U.S.C. 552a(e)(1): This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency. The reasons why the Investigative Files are exempted from the foregoing provision are as follows:

(i) In a security investigation it is difficult to determine accurately the relevancy and necessity of information during the process of information gathering. It is only after the information is evaluated that the relevancy and necessity of such information can be ascertained;

(ii) In a security investigation, the Office of Security often obtains information concerning the violation of laws other than those within the scope of its responsibilities. In the interest of effective law enforcement, it is desirable that the Office of Security retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law;

(iii) In interviewing persons, or obtaining other forms of evidence during a criminal investigation, information will be supplied to the investigator which relates to matters which are ancillary to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information is not readily susceptible to segregation.

e. The foregoing exemptions are claimed for materials maintained in the Investigative Files to the extent that such materials contain information and reports described in 5 U.S.C. 552a(k)(2).

The Bureau of Engraving and Printing exempts under section (k) of the Privacy Act of 1974, 5 U.S.C. 552a, the Bureau's Personnel Security Files and Personnel Security Files and Indices from sections (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f) of the Act. The records maintained in the exempt systems of records are of the type described in section (k)(5) of the Act:

> investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this exemption and are subject to all the requirements of the Privacy Act.

The sections of the Act from which this system of records are exempt are in general those providing for individual access to records. When such access would cause the identity of a confidential source to be revealed, it would impair the future ability of the Treasury Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. Federal contracts, or access to classified information.

In addition, the systems are exempt from section (e)(1) which requires that the agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a statutory or executively ordered purpose. The Director finds that to fulfill the requirements of section (e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

If any investigations within the scope of section (k)(5) become involved with civil and criminal matters, exemptions from the Act should also be asserted under sections (k) (2) or (j) (2).

### BUREAU OF THE MINT

*Notice of rules exempting certain systems from requirements of the Privacy Act*

(a) *In general.* The Director of the Mint exempts investigatory files on theft of Mint property and examination reports of coins forwarded to the Mint by the U.S. Secret Service from certain subsections of 5 U.S.C. 552a, the Privacy Act of 1974. The purpose of the exemption is to maintain the confidentiality of investigatory material compiled for law enforcement purposes.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552(a)(k)(2), and pursuant to the authority vested in the Director of the Mint by paragraph 1.23(c) of Subpart C of Part 1 of Subtitle A of Title 31 of the Code of Federal Regulations.

(c) *Name of systems.* Examination Reports of Coins Forwarded to Mint from U.S. Secret Service and Investigatory Files on Theft of Mint Property.

(d) *Provisions from which exempted.* These two systems consist in large part of records generated by the U.S. Secret Service in connection with its responsibilities to enforce various criminal laws. Those records are described in 5 U.S.C. 552a(j) and are exempted from various provisions of the Privacy Act of 1974 by the Director of the U.S. Secret Service. To a lesser extent, these two systems also contain records generated and compiled by the Bureau of the Mint in assisting the U.S. Secret Service in its law enforcement efforts. Those records are described in 5 U.S.C. 552a(k)(2), the Privacy Act of 1974. Exemptions will be claimed for such records only where appropriate from the following provisions, subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a.

(e) *Reasons for claimed exemptions.* Those provisions of the Privacy Act would otherwise require the Bureau of the Mint to notify an individual of investigatory material maintained in a record pertaining to him, permit access to such record, permit request for its correction (section 552a(d), (e)(4) (G), (H) and (f)); make available to him any required accounting of disclosures made of the record (section 552a(c)(3)), publish the sources of records in the system (section 552a(e)(4) (I)); and screen records to insure that there is maintained only such information about an individual as is relevant to accomplish a required purpose of the Bureau (section 52a(e)(1)). Disclosure to an individual of investigatory material pertaining to him would hamper law enforcement by prematurely disclosing the knowledge of illegal activities and the evidentiary bases for possible enforcement actions. Furthermore, the disclosure of certain investigatory material compiled for law enforcement purposes may disclose investigative techniques and procedures, so that future law enforcement efforts would be hindered. Access to an accounting of disclosures of such records would have a similar detrimental effect on law enforcement. Accordingly, the Director of the Mint finds that the public interest and public policy in protecting the coinage and property of the United States require exemption from the stated sections of the Act to the extent that they are applicable to appropriate materials in these two systems.

## COMPTROLLER OF THE CURRENCY

### *Notice of rules exempting certain systems of records from the requirements of the Privacy Act of 1974*

*In general.* Notice is hereby given that the Comptroller of the Currency exempts certain systems of its records. They are the following: (1) Information file on individual and commercial entities known or suspected of being involved in fraudulent activities and (2) Federal Bureau of Investigation Reports relating to persons charged with or suspected of criminal activity concerning National Banks. The Department of Justice has exempted these systems of records from certain provisions of 5 U.S.C. 552a (see Justice Department Exemptions). The purpose of these exemptions is to maintain the confidentiality of information compiled for the purpose of criminal investigation.

*Authority.* The authority to issue exemptions for this agency is vested in the Secretary of the Treasury pursuant to 5 U.S.C. 552a (j) and (k) but has been delegated by the Secretary to the Comptroller 31 CFR 1.23(c).

The authority to rely upon the exemption promulgated by the Department of Justice for its records which are disseminated to our agency is set forth at 5 U.S.C. 552a, section 6 and Office of Management and Budget

Guidelines for the implementation of the Privacy Act (40 FR 28971-28974).

[40 FR 45692, Oct 2, 1975, as amended at 44 FR 7141, Feb. 6, 1979; 44 FR 42189, July 19, 1979; 45 FR 13455, Feb. 29, 1980]

## APPENDIX A—OFFICE OF THE SECRETARY

1. *In general.* This appendix applies to the Office of the Secretary as defined in 31 CFR Part 1, Subpart C § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with which "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the Office of the Secretary will be made by the head of the organizational unit having immediate custody of the records requested, or his delegate as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Request, OS, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

Requests may be delivered personally to the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C.

3. *Requests for amendments of records.* Initial determinations under 31 CFR 1.27(a) through (d) as to whether to grant requests to amend records for the Office of the Secretary will be made by the head of the organization or unit having immediate custody of the records or his delegate. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to:

Privacy Act Amendment Request, OS, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Office of the Secretary (including extensions of time on appeal) will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records, or the delegate of such officer, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made from initial determinations refusing to amend records made by mail should be addressed as indicated in the letter of initial decision or to:

Privacy Act Amendment Appeal, OS, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

Appeals may be delivered personally to the Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C.

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or his delegate and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Office of the Secretary is set forth in the General Services Administration publication entitled "Notices of Records Systems". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 and (8) below, and locations for access are indicated in the notice for the pertinent system.

8. *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Office of the Secretary on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

## APPENDIX B—INTERNAL REVENUE SERVICE

(a) *Purpose.* The purpose of this section is to set forth the procedures which have been established by the Internal Revenue Service for individuals to exercise their rights under the Privacy Act of 1974 (88 Stat. 1896) with respect to systems of records maintained by the Internal Revenue Service, including the Office of the Chief Counsel. The proposed procedures contained in this section are to be promulgated under the authority of 5 U.S.C. 552a(f). The procedures contained in this section relate to the following:

(1) The procedures whereby an individual can be notified in response to a request if a system of records named by the individual contains a record pertaining to such individual (5 U.S.C. 552a(f)(1)).

(2) The procedures governing reasonable times, places, and requirements for identifying an individual who requests a record of information pertaining to such individual before the Internal Revenue Service will make the record or information available to the individual (5 U.S.C. 552a(f)(2)).

(3) The procedures for the disclosure to an individual upon a request of a record of information pertaining to such individual, including special pro-

cedure for the disclosure to an individual of medical records, including psychological records. (5 U.S.C. 552a(f)(3)).

(4) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Internal Revenue Service of an initial adverse agency determination, and for whatever additional means may be necessary for individuals to be able to exercise fully their right under 5 U.S.C. 552a (5 U.S.C. 552a(f)(4)).

Any individual seeking to determine whether a system of records maintained by any office of the Internal Revenue Service contains a record or information pertaining to such individual, or seeking access to, or amendment of, such a record, must comply fully with the applicable procedure contained in paragraph (c) or (d) of this section before the Internal Revenue Service will act on the request. Neither the notification and access (or accounting of disclosures) procedures under paragraph (c) of this section nor the amendment procedures under paragraph (d) of this section are applicable to (i) systems of records exempted pursuant to 5 U.S.C. 552a (j) and (k), (ii) information compiled in reasonable anticipation of a civil action or proceeding (see 5 U.S.C. 552a(d)(5)), or (iii) information pertaining to an individual which is contained in, and inseparable from, another individual's record.

(b) *Access to and amendment of tax records.* The provisions of the Privacy Act of 1974 may not be availed of by an individual to amend or correct any tax record. The determination of liability for taxes imposed by the Internal Revenue Code, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes are governed by the provisions of the Internal Revenue Code and by the procedural rules of the Internal Revenue Service. These provisions set forth the established procedures governing the determination of liability for tax, the collection of such taxes, and the payment (including credits or refunds of overpayments) of such taxes. In addition, these provisions set forth the procedures (including procedures for judicial review) for resolving disputes between taxpayers and the Internal Revenue Service involving the amount of tax owed, or the payment or collection of such tax. These procedures are the exclusive means available to an individual to contest the amount of any liability for tax or the payment or collection thereof. See, for example, 26 CFR 601.103 for summary of general tax procedures. Individuals are advised that Internal Revenue Service procedures permit the examination of certain tax records during the course of an investigation, audit, or collection activity. Accordingly, individuals should contact the Internal Revenue Service employee conducting an audit or effecting the collection of tax liabilities to gain access to such records, rather than seeking access under the provisions of the Privacy Act. Where, on the other hand, an individual desires information or records not in connection with an investigation, audit, or collection activity, the individual may follow these procedures.

(c) *Procedures for access to records*—(1) *In general.* This paragraph sets forth the procedure whereby an individual can be notified in response to a request if a system of records named by the individual which is maintained by the Internal Revenue Service contains a record pertaining to such individual. In addition, this paragraph sets forth the procedure for the disclosure to an individual upon a request of a record or information pertaining to such individual, including procedures for verifying the identity of the individual before the Internal Revenue Service will make a record available, and the procedure for requesting an accounting of disclosures of such records. An individual seeking to determine whether a particular system of records contains a record or records pertaining to such individual and seeking access to such records (or seeking an accounting of disclosures of such records) shall make a request for notification and access (or a request for an accounting of disclosures) in accordance with the rules provided in paragraph (c)(2) of this section.

(2) *Form of request for notification and access or request for an accounting of disclosures.* (i) A request for notification and access (or a request for an accounting of disclosures) shall be made in writing and shall be signed by the person making the request.

(ii) Such request shall be clearly marked "Request for notification and access", or "Request for accounting of disclosures".

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (*e.g.*, husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the particular system of records (as set forth in the Notice of Systems) for which the individual is seeking notification and access (or an accounting of disclosures), and the title and business address of the official designated in the access section for the particular system (as set forth in the Notice of Systems). In the case of two or more systems of records which are under the control of the same designated official at the same systems location, a single request may be made for such systems. In the case of two or more systems of records which are not in the control of the same designated official at the same systems location, a separate request must be made for each such system.

(vi) If an individual wishes to limit a request for notification and access to a particular record or records, the request should identify the particular record. In the absence of a statement to the contrary, a request for notification and access for a particular system of records shall be considered to be limited to records which are currently maintained by the designated official at the systems location specified in the request.

(vii) If such request is seeking notification and access to material maintained in a system of records which is exempt from disclosure and access under 5 U.S.C. 552a(k)(2), the individual making the request must establish that such individual has been denied a right, privilege, or benefit that such individual would otherwise be entitled to under Federal law as a result of the maintenance of such material.

(viii) Such request shall state whether the individual wishes to inspect the record in person, or desires to have a copy made and furnished without first inspecting it. If the individual desires to have a copy made, the request must include an agreement to pay the fee for duplication ultimately determined to be due. If the individual does not wish to inspect a record, but merely wishes to be notified whether a particular system of records contains a record pertaining to such individual, the request should so state.

(3) *Time and place for making request.* A request for notification and access to records under the Privacy Act (or a request for accounting of disclosures) shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records for which the individual is seeking notification and access (or an accounting of disclosures). The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(4) *Sample request for notification and access to records.* The following are sample requests for notification and access to records which will satisfy the requirements of this paragraph:

### REQUEST FOR NOTIFICATION AND ACCESS TO RECORDS BY MAIL

I, John Doe, of 100 Main Street, Boston, Massachusetts 02108 (soc. sec. num. 000-00-0000) request under the Privacy Act of 1974 that the following system of records be examined and that I be furnished with a copy of any record (or a specified record) contained therein pertaining to me. I agree that I will pay the fees ultimately determined to be due for duplication of such record. I have enclosed the necessary identification.

SYSTEM NAME:
SYSTEM LOCATION:
DESIGNATED OFFICIAL:

John Doe

### REQUEST FOR NOTIFICATION AND ACCESS TO RECORDS IN PERSON

I, John Doe, of 100 Main Street, Boston, Massachusetts 02108 (soc. sec. num. 000-00-0000) request under the provisions of the Privacy Act of 1974, that the following system of records be examined and that I be granted access in person to inspect any record (or a specified record) contained therein pertaining to me. I have enclosed the necessary identification.

SYSTEM NAME:
SYSTEM LOCATION:
DESIGNATED OFFICIAL:

John Doe

(5) *Processing a request for notification and access to records or a request for an accounting of disclosures.* (i) If a request for notification and access (or request for an accounting of disclosures) omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access (or a request for an accounting of disclosures), to a particular system of records by the designated official for such system, a determination will be made as to whether the particular system of records is exempt from the notification and access provisions of the Privacy Act, and if such system is not exempt, whether it does or does not contain a record pertaining to the individual making the request. If a determination cannot be made within 30 days, the individual will be notified of the delay, the reasons therefor, and the approximate time required to make a determination. If it is determined by the designated official that the particular system of records is exempt from the notification and access provisions of the Privacy Act, the individual making the request will be notified of the provision of the Privacy Act under which the exemption is claimed. On the other hand, if it is determined by the designated official that the particular system of records is not exempt from the notification and access provisions of the Privacy Act and that such system contains a record pertaining to the individual making the request, the individual will be notified of the time and place where inspection may be made. If an individual has not requested that access be granted to inspect the record in person, but merely requests that a copy of the record be furnished, or if it is determined by the designated official that the granting of access to inspect a record in person is not feasible in a particular case, then the designated official will furnish a copy of the record with the notification, or if a copy cannot be furnished at such time, a statement indicating the approximate time such copy will be furnished. If the request is for an accounting of disclosures from a system of records which is not exempt from the accounting of disclosure provisions of the Privacy Act, the individual will be furnished with an accounting of such disclosures.

(6) *Granting of access.* Normally, an individual will be granted access to inspect a record in person within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of a request for notification and access by the designated official. If access cannot be granted within 30 days, the notification will state the reasons for the delay and the approximate time such access will be granted. An individual wishing to inspect a record may be accompanied by another person of his choosing. Both the individual seeking access and the individual accompanying him may be required to sign a form supplied by the Internal Revenue Service indicating that the Service is authorized to disclose or discuss the contents of the record in the presence of both individuals. See 26 CFR 601.502 for requirements to be met by taxpayer's representatives in order to

be recognized for the purpose of discussing the contents of any tax records.

(7) *Medical records.* When access is requested to medical records (including psychological records), the designated official may determine that release of such records will be made only to a physician designated by the individual to have access to such records.

(8) *Verification of identity.* An individual seeking notification or access to records, or seeking to amend a record, must satisfy one of the following identification requirements before action will be taken by the Internal Revenue Service on any such request:

(i) An individual seeking notification or access to records in person, or seeking to amend a record in person, may establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card).

(ii) An individual seeking notification or access to records by mail, or seeking to amend a record by mail, may establish identity by a signature, address, and one other identifier such as a photocopy of a driver's license or other document bearing the individual's signature.

(iii) Notwithstanding subdivisions (i) and (ii) of this subparagraph, an individual seeking notification or access to records by mail or in person, or seeking to amend a record by mail or in person, who so desires, may establish identity by providing a notarized statement, swearing or affirming to such individual's identity and to the fact that the individual understands the penalties provided in 5 U.S.C. 552a(i)(3) for requesting or obtaining access to records under false pretenses.

Notwithstanding subdivision (i), (ii), or (iii) of this subparagraph, a designated official may require additional proof of an individual's identity before action will be taken on any request if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, a parent of any minor or a legal guardian of any individual will be required to provide adequate proof of legal relationship before such person may act on behalf of such minor or such individual.

(9) *Fees.* The fee for costs required of the Internal Revenue Service in copying records pursuant to this paragraph is $0.10 per page. However, no fee will be charged if the aggregate costs required of the Internal Revenue Service in copying records is less than $3.00. If an individual who has requested access to inspect a record in person is denied such access by the designated official because it would not be feasible in a particular case, copies of such record will be furnished to the individual without payment of the fees otherwise required under this subparagraph. If the Internal Revenue Service estimates that the total fees for costs incurred in complying with a request for copies of records will amount to $50 or more, the individual making the request may be required to enter into a contract for the payment of the actual fees with respect to the request before the Service will furnish the copies requested. Payment of fees for copies of records should be made by check or money order payable to the Internal Revenue Service.

(d) *Procedures for amendment of records*—(1) *In general.* This paragraph sets forth the procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to such individual, for making a determination on the request, for making an appeal within the Internal Revenue Service of an initial adverse determination, and for judicial review of a final determination.

(2) *Amendment of record.* Under 5 U.S.C. 552a(d)(2), an individual who has been granted access to a record pertaining to such individual may, after inspecting the record, request that the record be amended to make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete. An individual seeking to amend a record shall make a request to amend a record in accordance with the rules provided in paragraph (d)(3) of this section. See paragraph (b) of this sec-

tion for prohibition against amendment of tax records.

(3) *Form of request for amendment of record.* (i) A request for amendment of a record shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked "Request for amendment of record."

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (*e.g.*, husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the official designated in the access section for such system (as set forth in the Notice of Systems).

(vi) Such request shall specify the particular record in the system which the individual is seeking to amend.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(4) *Time and place for making request.* A request to amend a record under the Privacy Act shall be addressed to or delivered in person to the office of the official designated in the access section for the particular system of records. The title and office address of such official is set forth for each system of records in the Notice of Systems of Records. A request delivered to an office in person must be delivered during the regular office hours of that office.

(5) *Processing a request for amendment of a record.* (i) Within 10 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, the individual will be sent a written acknowledgement that the request has been received. The acknowledgement will state that the request has been received, that action is being taken thereon, and that the individual will be notified within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the requested amendments will or will not be made. If a request for amendment of a record omits any information which is essential to processing the request, the request will not be acted upon and the individual making the request will be promptly advised of the additional information which must be submitted before the request can be processed.

(ii) Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request to amend a record by the designated official, a determination will be made as to whether to grant the request in whole or in part. The individual will then be notified in writing of the determination. If a determination cannot be made within 30 days, the individual will be notified in writing within such time of the reasons for the delay and the approximate time required to make a determination. If it is determined by the designated official that the request will be granted, the requested changes will be made in the record and the individual will be notified of the changes. In addition, to the extent an accounting was maintained, all prior recipients of such record will be notified of the changes. Upon request, an individual will be furnished with a copy of the record as amended subject to the payment of the appropriate fees. On the other hand, if it is determined by the designated official that the request, or any portion thereof, will not be granted, the individual will be notified in writing of the adverse determination. The notification of an adverse determination will set forth the reasons for the refusal to amend the record. In addition, the notification will contain a statement informing the individual of such individual's right to request an independent review of the adverse determination by a reviewing officer in the national office of the Internal Revenue Service and the procedures for requesting such a review.

(6) *Administrative review of adverse determination.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with the refusal of the agency to amend a record may, within 35 days of being notified of the adverse determination, request an independent review of such refusal by a reviewing officer in the national office of the Internal Revenue Service. The reviewing officer for the Internal Revenue Service is the Commissioner of Internal Revenue, the Deputy Commissioner, or an Assistant Commissioner. In the case of an adverse determination relating to a system of records maintained by the Office of the Chief Counsel for the Internal Revenue Service, the reviewing officer is the Chief Counsel or his delegate. An individual seeking a review of an adverse determination shall make a request for review in accordance with the rules provided in paragraph (d)(7) of this section.

(7) *Form of request for review.* (i) A request for review of an adverse determination shall be in writing and shall be signed by the individual making the request.

(ii) Such request shall be clearly marked "Request for review of adverse determination".

(iii) Such request shall contain a statement that it is being made under the provisions of the Privacy Act of 1974.

(iv) Such request shall contain the name and address of the individual making the request. In addition, if a particular system employs an individual's social security number as an essential means of accessing the system, the request must include the individual's social security number. In the case of a record maintained in the name of two or more individuals (*e.g.*, husband and wife), the request shall contain the names, addresses, and social security numbers (if necessary) of both individuals.

(v) Such request shall specify the particular record which the individual is seeking to amend, the name and location of the system of records (as set forth in the Notice of Systems) in which such record is maintained, and the title and business address of the designated official for such system (as set forth in the Notice of Systems).

(vi) Such request shall include the date of the initial request for amendment of the record, and the date of the letter notifying the individual of the initial adverse determination with respect to such request.

(vii) Such request shall clearly state the specific changes which the individual wishes to make in the record and a concise explanation of the reasons for the changes. If the individual wishes to correct or add any information, the request shall contain specific language making the desired correction or addition.

(8) *Time and place for making the request.* A request for review of an adverse determination under the Privacy Act shall be addressed to or delivered in person to the Director, Disclosure Operations Division, Attention: TX-D, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. A request for review of an adverse determination will be promptly referred by the Director, Disclosure Operations Division to the appropriate reviewing officer for his view and final determination.

(9) *Processing a request for review of adverse determination.* Within 30 days (not including Saturdays, Sundays, and legal public holidays) after the receipt of a request for review of an adverse determination by the appropriate reviewing officer, the reviewing officer will review the initial adverse determination, make a final determination whether to grant the request to amend the record in whole or in part, and notify the individual in writing of the final determination. If a final determination cannot be made within 30 days, the Commissioner of Internal Revenue may extend such 30-day period, and the individual will be notified in writing within such time of the cause for the delay and the approxi-

mate time required to make a final determination. If it is determined by the reviewing officer that the request to amend the record will be granted, the reviewing officer will cause the requested changes to be made and the individual will be so notified. Upon request, an individual will be furnished with a copy of the record as amended subject to the payment of appropriate fees. On the other hand, if it is determined by the reviewing officer that the request to amend the record, or any portion thereof, will not be granted, the individual will be notified in writing of the final adverse determination. The notification of a final adverse determination will set forth the reasons for the refusal of the reviewing officer to amend the record. The notification shall include a statement informing the individual of the right to submit a concise statement for insertion in the record setting forth the reasons for the disagreement with the refusal of the reviewing officer to amend the record. In addition, the notification will contain a statement informing the individual of the right to seek judicial review by a United States district court of a final adverse determination.

(10) *Statement of disagreement.* Under 5 U.S.C. 552a(d)(3), an individual who disagrees with a final adverse determination not to amend a record subject to amendment under the Privacy Act may submit a concise statement for insertion in the record setting forth the reasons for disagreement with the refusal of the reviewing officer to amend the record. A statement of disagreement should be addressed to or delivered in person to the Director, Disclosure Operations Division, Attention: TX:D, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. The Director, Disclosure Operations Division will forward the statement of disagreement to the appropriate designated official who will cause the statement to be inserted in the individual's record. Any such statement will be available to anyone to whom the record is subsequently disclosed and the prior recipients of the record will be provided with a copy of the statement of disagreement to the extent an accounting of disclosures was maintained.

(11) *Judicial review.* If, after a review and final determination on a request to amend a record by the appropriate reviewing officer, the individual is notified that the request will not be granted, or if, after the expiration of 30 days (not including Saturdays, Sundays, and legal public holidays) from the receipt of such request by the Director, Disclosure Operations Division, action is not taken thereon in accordance with the requirements of paragraph (d)(9) of this section, an individual may commence an action within the time prescribed by law in a U.S. district court pursuant to 5 U.S.C. 552a(g)(1). The statute authorizes an action only against the agency. With respect to records maintained by the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. Where provided in such Rules, delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW., Washington, D.C. 20224. The district court will determine the matter *de novo*.

(e) *Records transferred to Federal Records Centers.* Records transferred to the Administrator of General Services for storage in a Federal Records Center are not used by the Internal Revenue Service in making any determination about any individual while stored at such location and therefore are not subject to the provisions of 5 U.S.C. 552a(e)(5) during such time.

[40 FR 45684, Oct. 2, 1975, as amended at 43 FR 42249, Sept. 20, 1978]

## APPENDIX C—UNITED STATES CUSTOMS SERVICE

1. *In general.* This appendix applies to the United States Customs Service. It sets forth specific notification and access procedures with respect to particular systems of records and identifies the officers designated to make

the initial determinations with respect to notification and access to records and accountings of disclosures of records, sets forth the specific procedures for requesting amendment of records and identifies the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, identifies the officers designated to grant extensions of time on appeal, the officers with whom "Statements of Disagreement" may be filed and the officer designated to receive service of process, and sets forth the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems."

2. *Requests for notification and access to records and accountings of disclosures.* (a) For records which are not maintained at Customs Service Headquarters, initial requests for notification and access to records and accountings of disclosures under 31 CFR 1.26 should be mailed or personally delivered in writing to the Director, Entry Procedures and Penalties Division, Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, or to the Regional Commissioner of Customs in whose region the records are located, and such officials shall have the authority to grant the request, and, in the case of a Regional Commissioner, to deny the request; any denial of a request directed to Customs Service Headquarters will be made by the Assistant Commissioner, Office of Regulations and Rulings. A request directed to a Regional Commissioner should be mailed to or personally delivered at the appropriate location specified in Customs Appendix A to the "Notices of Records Systems" published by the General Services Administration. It is suggested that requests pertaining to records not maintained at Customs Service Headquarters be directed to the appropriate Regional Commissioner in order to ensure expeditious handling of the request.

(b) For records which are maintained at Customs Service Headquarters, initial requests for notification and access to records and accountings of disclosures under 31 CFR 1.26 should be mailed or personally delivered in writing to the Director, Entry Procedures and Penalties Division, Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and such official shall have the authority to grant the request. Any denial of a request will be made by the Assistant Commissioner, Office of Regulations and Rulings.

(c) Each request shall comply with the identification and other requirements set forth in 31 CFR 1.26 and in the appropriate system notice in the "Notices of Records Systems" published by the General Services Administration, and each request should be conspicuously labeled on the face of the envelope "Privacy Act Request."

3. *Requests for amendment of records.* (a) For records which are not maintained at Customs Service Headquarters, initial requests for amendment of records under 31 CFR 1.27 (a) through (d) should be mailed or personally delivered in writing to the Director, Entry Procedures and Penalties Division, Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, or to the Regional Commissioner of Customs in whose region the records are located, and such officials shall have the authority to grant the request, and, in the case of a Regional Commissioner, to deny the request; any denial of a request directed to Customs Service Headquarters will be made by the Assistant Commissioner, Office of Regulations and Rulings. A request directed to a Regional Commissioner should be mailed to or personally delivered at the appropriate location specified in Customs Appendix A to the "Notices of Records Systems" published by the General Services Administration. It is suggested that requests pertaining to records not maintained at Customs Service Headquarters be directed to the appropriate Regional Commission-

er in order to ensure expeditious handling of the request.

(b) For records which are maintained at Customs Service Headquarters, initial requests for amendment of records under 31 CFR 1.27 (a) through (d) should be mailed or personally delivered in writing to the Director, Entry Procedures and Penalties Division, Office of Regulations and Rulings, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, and such official shall have the authority to grant the request. Any denial of a request will be made by the Assistant Commissioner, Office of Regulations and Rulings. (c) Each request shall comply with the identification and other requirements set forth in 31 CFR 1.27 and in the appropriate system notice in the "Notices of Records Systems" published by the General Services Administration, and each request should be conspicuously labeled on the face of the envelope "Privacy Act Amendment Request."

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations (including extensions of time on appeal) under 31 CFR 1.27(e) with respect to all Customs Service records will be made by the Commissioner of Customs, and all such appeals should be mailed or personally delivered to the United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Each appeal should be conspicuously labeled on the face of the envelope "Privacy Act Amendment Appeal."

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e) (4) with respect to records maintained by the United States Customs Service is set forth in the General Services Administration publication entitled "Notices of Records Systems."

## APPENDIX D—UNITED STATES SECRET SERVICE

1. *In general.* This appendix applies to the United States Secret Service and its sub-components, the Executive Protective Service and the Treasury Security Force. It sets forth specific notification, access, and amendment procedures with respect to systems of records including identification requirements, and times and places where records may be reviewed; identifies the officers designated to make initial determinations with respect to notifications of and access to records; the officers designated to make the initial and appellate determinations with respect to requests for amendment of records; the officer designated to grant extensions of time on appeal; the officers with which "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notice of the intended use of the information contained in such systems required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the United States Secret Service will be made by the Staff Assistant, Freedom of Information and Privacy Acts, Office of Administration, United States Secret Service. Requests for notification made by mail should be addressed to:

Staff Assistant, Freedom of Information and Privacy Acts, Office of Administration, United States Secret Service, 1800 G Street, NW., Room 908, Washington, D.C. 20223.

Requests may be delivered personally to the Staff Assistant, Freedom of Information and Privacy Acts, United States Secret Service, 1800 G Street, NW., Room 908, Washington, D.C. between the hours of 9:00 a.m. and 5:30 p.m. of any day excluding Saturdays, Sundays and legal holidays.

Requests for access to records made by mail should be addressed to:

Staff Assistant, Freedom of Information and Privacy Acts, Office of Administration, United States Secret Service, 1800 G Street, NW., Room 908, Washington, D.C. 20223.

Requests may be delivered personally to the Staff Assistant, Freedom of Information and Privacy Acts, U.S. Secret Service, 1800 G Street, NW., Room 908, Washington, D.C. between the hours of 9:00 a.m. and 5:30 p.m. of any day excluding Saturdays, Sundays and legal holidays.

a. *Identification Requirements.* In addition to the requirements specified in 31 CFR 1.26 each request for notification, access or amendment of records made by mail shall contain the requesting individual's date and place of birth and a duly notarized statement signed by the requester asserting his or her identity and stipulating that the requesting individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretences is punishable by a fine of up to $5,000.

b. *Individuals making requests in person.* Individuals making requests in person will be required to exhibit acceptable identifying documents such as employee identification numbers, drivers licenses, medical cards or other documents sufficient to verify the identity of the requester.

c. *Physical Inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the requested records may be inspected. The inspection of records will be conducted at the Secret Service field office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the Secret Service Field Office or other facility where the disclosure is made. A person of his or her own choosing may accompany the individual making the request provided the individual furnishes a written statement authorizing the disclosure of that individual's record in the accompanying person's presence. Any disclosure of a record will be made in the presence of a representative of the U.S. Secret Service.

3. *Requests for amendment of records.* Initial determination under 31 CFR Part 1, as to whether to grant requests to amend records will be made by the Staff Assistant, Freedom of Information and Privacy Acts, Office of Administration, U.S. Secret Service, 1800 G Street, NW., Room 908, Washington, D.C. Requests for amendments of records should be addressed to:

Staff Assistant, Freedom of Information and Privacy Acts, Office of Administration, U.S. Secret Service, 1800 G. Street, NW., Room 908, Washington, D.C. 20223.

Requests may be delivered personally to the Staff Assistant, Freedom of Information and Privacy Acts, U.S. Secret Service, 1800 G Street, NW., Room 908, Washington, D.C., between the hours of 9:00 a.m. and 5:30 p.m. of any day excluding Saturdays, Sundays and legal holidays.

4. *Administrative appeal of initial determinations refusing amendment of records.* Appellate determinations refusing amendment of records under 31 CFR 1.27 including extensions of time on appeal, with respect to records of the U.S. Secret Service will be made by the Assistant Secretary (Enforcement, Operations, and Tariff Affairs). Appeals made by mail should be addressed to:

Assistant Secretary (Enforcement, Operations and Tariff Affairs), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3448, Washington, D.C. 20220.

Appeals may be delivered personally to the Assistant Secretary (Enforcement, Operations, and Tariff Affairs) in Room 3448, Main Treasury Building located at 1500 Pennsylvania Avenue, NW., Washington, D.C.

5. *Statements of Disagreement.* "Statements of Disagreements" pursuant to 31 CFR 1.27(e)(4)(i) shall be

filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the U.S. Secret Service Legal Counsel and shall be delivered to such officer at the following location:

Legal Counsel, U.S. Secret Service, 1800 G Street, NW., Room 842, Washington, D.C. 20223.

7. *Annual notice of systems of records.* The annual notice of systems or records required by 5 U.S.C. 552a(e) (4) with respect to records maintained by the Secret Service is set forth in the General Services Administration publication entitled "Notices of Records Systems".

## APPENDIX E—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms. It sets forth specific notification, access, and amendment procedures with respect to ATF's systems of records (published by the General Services Administration as "Notice of Records Systems") including identification requirements, and times and places where records may be reviewed; identifies the officers designated to make the initial determinations with respect to notifications of and access to records; the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officer designated to grant extensions of time on appeal; the officer designated to receive service of process and addresses for delivery of requests, appeals, and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems."

2. *Requests for notification of existence of records.* Initial determination as to whether to grant requests made by individuals to ascertain if a system of records contains a record pertaining to him will be made by the Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco and Firearms. Requests for such notification made by mail should be addressed to:

Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.

Requests may be delivered personally to Room 4402, 1200 Pennsylvania Avenue, NW., Bureau of Alcohol, Tobacco and Firearms, Washington, D.C.

3. *Requests for access to records and accounting of disclosures.* Initial determinations under 31 CFR 1.26 as to whether to grant requests for access to records or access to accounting of disclosures for the Bureau of Alcohol, Tobacco and Firearms will be made by the Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco and Firearms. Requests for access to records or accountings made by mail should be addressed to:

Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.

Requests may be delivered personally to Room 4402, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C.

4. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d) as to whether to grant requests to amend records for the Bureau of Alcohol, Tobacco and Firearms will be made by the Assistant to the Director (Disclosure), Bureau of Alcohol, Tobacco and Firearms. Requests for amendment of records should be addressed to:

Privacy Act Request, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.

Requests may be delivered personally to Room 4402, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C.

5. *Identification requirements.* (a) In addition to the requirements specified in 31 CFR 1.26(d), and section 7 of this appendix, each request for notification, access or amendment of records made by mail shall contain the requesting individual's date and place of

birth and a statement signed by the requester asserting his or her identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is a misdemeanor and punishable by a fine of up to $5,000.00: *Provided,* That the Bureau of Alcohol, Tobacco and Firearms may require a signed notarized statement verifying the identity of the requester.

(b) Individuals making requests in person will be required to exhibit at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of the requester.

(c) The parent or guardian of a minor or a person judicially determined to be incompetent, shall in addition to establishing the identity of the minor or other person he represents as required in (a) and (b), establish his own parentage or guardianship by furnishing a copy of a birth certificate showing parentage (or other satisfactory documentation) or a court order establishing the guardianship.

6. *Request for physical inspection of records.* Upon determining that a request for the physical inspection of records is to be granted, the requester shall be notified in writing of the determination, and when and where the records may be inspected. The inspection of records will be made at the Bureau of Alcohol, Tobacco and Firearms field office or other facility located nearest to the residence of the individual making the request. Such inspection shall be conducted during the regular business hours of the field office or other facility where the disclosure is made. A person of the requester's own choosing may accompany the requester provided the requester furnishes a written statement authorizing the disclosure of the requester's record in the accompanying person's presence. The record inspection will be made in the presence of a representative of the Bureau. Following the inspection of the record, the individual will acknowledge in writing the fact that he or she had an opportunity to inspect the requested record.

7. *Requests for copies of records without prior physical inspection.* Upon determining that an individual's request for copies of his records without prior physical inspection is to be granted, the requester shall be notified in writing of the determination, and the location and time for his receipt of the requested copies. The copies will be made available at the Bureau of Alcohol, Tobacco and Firearms field office or other facility located nearest to the residence of the individual making the request. Copies shall be received by the requester during the regular business hours of the field office or other facility where the disclosure is made. Transfer of the copies to the individual shall be conditioned upon payment of copying costs and his presentation of at least two acceptable identifying documents such as employee identification cards, driver's license, medical cards, or other documents sufficient to verify the identity of requester. Following the receipt of the copies, the individual will acknowledge receipt in writing.

8. *Administrative appeal of initial determination refusing amendment of record.* Appellate determinations upon the initial denial, in whole or in part, of requests for amendment of records under 31 CFR 1.27(e), including extensions of time on appeal, with respect to records of the Bureau will be made by the Director or his delegate. Appeals made by mail should be addressed to:

Privacy Act Appeal, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.

Appeals may be delivered personally to Room 4402, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C.

9. *Statements of disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

10. *Service of process.* Service of process will be received in accordance with Rule 4, Federal Rules of Civil Procedure, by delivering a copy of the summons and of the complaint to the

United States Attorney for the district in which the action is brought as well as delivering a copy of the summons and complaint to the Chief Counsel, Bureau of Alcohol, Tobacco and Firearms or his delegate at the following location:

Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Room 5226, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226.

11. *Annual notice of systems of records and notice of the intended uses of the information in the systems.* The annual notice of systems of records and the notice of the intended uses of the information in the systems required by 5 U.S.C. 552a(e) (4) and (11) is set forth in the General Services Administration publication entitled "Notices of Records Systems." The intended uses of the information in each system are set forth in each system notice under the category of "Routine Uses."

## APPENDIX F—BUREAU OF ENGRAVING AND PRINTING

1. *In general.* This appendix applies to the Bureau of Engraving and Printing as defined in 31 CFR Part 1, Subpart C § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officer designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment, the officer designated to grant extension of time on appeal, the officer with which "Statements of Disagreement" may be filed, the officer designated to receive service of process, and the address for delivery of requests, appeals, and service of process. In addition, it references the official annual notice of systems of records and notices of intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems."

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Engraving and Printing will be made by the head of the organizational unit having immediate custody of the records requested, or his delegate, as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send requests for records should be addressed to: Privacy Act Officer, Management Services Division, Bureau of Engraving and Printing, Washington, D.C. 20228. Requests may be delivered personally to the Management Services Division, Room 602-17A, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, D.C. 20228.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d) as to whether to grant requests to amend records for the Bureau of Engraving and Printing will be made by the head of the organizational unit having immediate custody of the records, or his delegate. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to: Privacy Act Officer, Management Services Division, Bureau of Engraving and Printing, Washington, D.C. 20228.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Bureau of Engraving and Printing (including extensions of time on appeal) will be made by the Director of the Bureau or his delegate, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals from the initial determinations refusing to amend records made by mail should be addressed as indicated in the letter of initial decision or to: Privacy Act Officer, Management Services Division, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, D.C. 20228.

Appeals may be delivered personally to Room 602- 17A of the same address.

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of Process.* Service of process will be received by the General Counsel of the Department of the Treasury or his delegate, and shall be delivered to such officer at the following location: General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Bureau of Engraving and Printing is set forth in the General Services Administration publication entitled "Notices of Records Systems." Any specific requirements for access, including identification requirements, in addition to the requirements set forth in § 1.26 and § 1.27, and locations for access are indicated in the notice for the pertinent system.

## APPENDIX G—BUREAU OF GOVERNMENT FINANCIAL OPERATIONS

1. *In general.* This appendix applies to the Bureau of Government Financial Operations as mentioned in 31 CFR Part 1, Subpart C, § 1.20(g). It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with which "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of Government Financial Operations, will be made by the Special Assistant (Information and Privacy Officer), or his delegate as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send requests for records should be addressed to:

Special Assistant (Information and Privacy Officer), Bureau of Government Financial Operations, Department of the Treasury, Room 600, Treasury Annex No. 1, Washington, D.C. 20226.

Requests may be delivered personally to the Office of the Special Assistant (Information and Privacy Officer), Bureau of Government Financial Operations, Room 600, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, NW., Washington, D.C.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d) as to whether to grant requests to amend records for the Bureau of Government Financial Operations will be made by the Special Assistant (Information and Privacy Officer) or his delegate. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to:

Special Assistant (Information and Privacy Officer), Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex No. 1, Washington, D.C. 20226.

4. *Administrative appeal of initial determination refusing to amend records.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Bureau of Government Financial Operations (including extensions of time on appeal) will be made by the Commissioner, Bureau of Government Financial Operations, or the delegate of such officer, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made from initial determinations refusing to amend records made by mail should be addressed as indicated in the letter of initial decision or to:

Commissioner, Bureau of Government Financial Operations (Privacy), Department of the Treasury, Room 618, Treasury Annex No. 1, Washington, D.C. 20226.

Appeals may be delivered personally to the Commissioner, Bureau of Government Financial Operations, Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place NW., Washington, D.C.

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Commissioner, Bureau of Government Financial Operations or his delegate and shall be delivered to such officer at the following location:

Commissioner, Bureau of Governmental Financial Operations (Privacy), Department of the Treasury, Room 618, Treasury Annex No. 1, Pennsylvania Avenue and Madison Place, Washington, D.C.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e) (4) with respect to records maintained by the Bureau of Government Financial Operations is set forth in the General Services Administration publication entitled "Notices of Records Systems".

Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27, and locations for access are indicated in the notice for the pertinent system.

## APPENDIX H—BUREAU OF THE MINT

1. *In general.* This appendix sets for specific notification and access procedures with respect to particular systems of records maintained by the Bureau of the Mint, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officer with whom "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems."

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of the Mint will be made by the head of the Mint installation having immediate custody of the records requested, or the delegated official as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Request, Bureau of the Mint, Room 912, Warner Building, Washington, DC 20220.

Requests may be delivered personally to Room 912, Warner Building, 501-13th Street, NW, Washington, DC.

3. *Requests for amendment of records.* Initial determinations under 31

CFR 1.27 (a) through (d) as to whether to grant requests to amend records for the Bureau of the Mint will be made by the head of the Mint installation having immediate custody of the records or the delegated official. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to:

Privacy Act Amendment Request, Bureau of the Mint, Room 912, Warner Building, Washington, DC 20220.

4. *Administration appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Bureau of the Mint (including extensions of time on appeal) will be made by the Director of the Mint or the delegate of the Director. Appeals made from initial determinations refusing to amend records made by mail should be addressed to:

Privacy Act Amendment Appeal, Bureau of the Mint, Room 912, Warner Building, Washington, DC 20220.

Appeals may be delivered personally to Room 912, Warner Building, 501 13th Street, NW, Washington, DC.

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Director of the Mint and shall be delivered to such officer at the following location:

Director of the Mint, Room 2064, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Bureau of the Mint is set forth in General Services Administration publication entitled "Notices of Records Systems." Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27, and locations for access are indicated in the notice for the pertinent system.

## APPENDIX I—BUREAU OF THE PUBLIC DEBT

1. *In general.* This appendix applies to the Bureau of the Public Debt as defined in 31 CFR Part 1, Subpart C § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with which "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the Bureau of the Public Debt will be made by the head of the organizational unit having immediate custody of the records requested, or his delegate as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for access to records contained within a particular Bureau system of records should be submitted to the address indicated for that system in the descriptions thereof published by the General Services Ad-

ministration. Requests may be delivered personally to the Bureau of the Public Debt, Room 300, Washington Building, 15th Street and New York Avenue, NW., Washington, D.C.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27(a) through (d) as to whether to grant requests to amend records for the Bureau of the Public Debt will be made by the head of the organizational unit having immediate custody of the records or his delegate. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to:

Privacy Act Amendment Request, Commissioner of the Public Debt, 15th Street and New York Avenue, NW., Washington, D.C. 20226.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Bureau of the Public Debt (including extensions of time on appeal) will be made to the Commissioner of the Public Debt or his delegate, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made from initial determinations refusing to amend records made by mail should be addressed as indicated in the letter of initial decision or to:

Privacy Act Amendment Appeal, Commissioner of the Public Debt, 15th Street and New York Avenue, NW., Washington, D.C. 20226.

Appeals may be delivered personally to the Bureau of the Public Debt, Room 300, Washington Building, 15th Street and New York Avenue, NW., Washington, D.C.

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the Chief Counsel of the Bureau of the Public Debt or his delegate and shall be delivered to such officer at the following location:

Chief Counsel, Bureau of the Public Debt, Room 200, Washington Building, 15th Street and New York Avenue, NW., Washington, D.C. 20226.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e) (4) with respect to records maintained by the Bureau of the Public Debt is set forth in the General Services Administration publication entitled "Notices of Records Systems". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27, and locations for access are indicated in the notice for the pertinent system.

## APPENDIX J—OFFICE OF THE COMPTROLLER OF THE CURRENCY

1. *In General.* This appendix is applicable to the Office of the Comptroller of the Currency as defined at 31 CFR Part 1, Subpart A, § 1.20. This section promulgates a specific notification and access to procedure with respect to particular systems of records. Further, it identifies the persons designated to make the initial determinations regarding notification and access to records, designates officers who will make the initial and appellate determinations in connection with requests for amendment of records, designates officers who will be empowered to grant extensions of time on appeal, lists officers with which "Statements of Disagreement" may be filed, designates an office to receive service of process and provides addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the proposed uses of the information in the system required by 5 U.S.C. 552(e) (4) and (11) published by the General Services Administration as "Notices of Records Systems".

2. *Request for notification and access to records and accounting of disclosures.* Initial determination under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosure for the Office of the Comptroller of the Currency will be made to the Director, Public Affairs. Request for information and specific guidance on where to send such request should be addressed to:

Director, Public Affairs, Comptroller of the
Currency, Sixth Floor, 490 E. L'Enfant
Plaza, SW., Washington, D.C. 20219.

Requests may be delivered in person at the above mentioned address.

3. *Requests for amendment of records.* Initial determination under 31 CFR 1.27 (a) through (d) as to whether to grant requests to amend records for the Office of the Comptroller of the Currency will be made by the Director, Public Affairs. Requests for information or specific guidance on where to send such requests should be addressed to:

Director, Public Affairs, Comptroller of the
Currency, Sixth Floor, 490 E. L'Enfant
Plaza, SW., Washington, D.C. 20219.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations subject to 31 CFR 1.27(e) with respect to records of the Comptroller of the Currency including extensions of time on appeal, will be made by the Comptroller of the Currency or Chief Counsel or delegate of such officer, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made from the initial determinations refusing to amend records made by mail should be addressed to:

Director, Public Affairs, Comptroller of the
Currency, Sixth Floor, 490 E. L'Enfant
Plaza, SW., Washington, D.C. 20219.

Appeals may be delivered personally to the above mentioned address.

5. *Statements of disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with Director, Public Affairs at the previously designated address within 35 days of the date of notification.

6. *Service of process.* Service of process will be received by the Office of Chief Counsel of the Comptroller of the Currency or his delegate and shall be delivered to such offices at the following location:

Office of Chief Counsel, Comptroller of the
Currency, Sixth Floor, 490 E. L'Enfant
Plaza, SW., Washington, D.C. 20219.

7. *Annual Notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Comptroller of the Currency is set forth in materials entitled system of records. As a general proposition the records contained in the Comptroller's systems of records may be obtained only upon proper identification. Further, a fine of $5,000 is imposed pursuant to 5 U.S.C. 552(i) for persons seeking to obtain records of the Comptroller of the Currency under false pretenses.

## APPENDIX K—U.S. SAVINGS BONDS DIVISION

1. *In general.* This appendix applies to the Savings Bonds Division as defined in 31 CFR Part 1, Subpart C § 1.20. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with which "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests, appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems".

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to

grant requests for notification and access to records and accountings of disclosures for the Savings Bonds Division will be made by the head of the organizational unit having immediate custody of the records requested, or his delegate as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Contact, U.S. Savings Bonds Division, Department of the Treasury, 1111 20th Street, NW., Washington, D.C. 20226.

Requests may be delivered personally to U.S. Savings Bonds Division, Room 225A, Vanguard Building, 1111 20th Street, NW., Washington, D.C.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27(a) through (d) as to whether to grant requests to amend records for the Savings Bonds Division will be made by the head of the organizational unit having immediate custody of the records or his delegate. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to:

Privacy Act Contact, U.S. Savings Bonds Division, Department of the Treasury, 1111 20th Street, NW., Washington, D.C. 20226.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Savings Bonds Division (including extensions of time on appeal) will be made by the National Director, U.S. Savings Bonds Division or the delegate of such officer, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made from initial determinations refusing to amend records made by mail should be addressed as indicated in the letter of initial decision or to:

National Director, U.S. Savings Bonds Division, Department of the Treasury, 1111 20th Street, NW., Washington, D.C. 20226.

Appeals may be delivered personally to the above address.

5. *Statements of Disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification of refusal to amend at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or his delegate and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e)(4) with respect to records maintained by the Savings Bonds Division is set forth in the General Services Administration publication entitled "Notices of Records Systems." Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27, and locations for access are indicated in the notice for the pertinent system.

## APPENDIX L—CONSOLIDATED FEDERAL LAW ENFORCEMENT TRAINING CENTER

1. *In general.* This appendix applies to the Consolidated Federal Law Enforcement Training Center. It sets forth specific notification and access procedures with respect to particular systems of records, identifies the officers designated to make the initial determinations with respect to notification and access to records, the officers designated to make the initial and appellate determinations with respect to requests for amendment of records, the officers designated to grant extensions of time on appeal, the officers with which "Statements of Disagreement" may be filed, the officer designated to receive service of process and the addresses for delivery of requests,

appeals and service of process. In addition, it references the official annual notice of systems of records and notices of the intended uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published by the General Services Administration as "Notices of Records Systems."

2. *Requests for notification and access to records and accountings of disclosures.* Initial determinations under 31 CFR 1.26, as to whether to grant requests for notification and access to records and accountings of disclosures for the Consolidated Federal Law Enforcement Training Center will be made by the head of the organizational unit having immediate custody of the records requested, or his delegate as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send requests for records should be addressed to:

Privacy Act Request, Consolidated Federal Law Enforcement Training Center, Glynco, Georgia 31520.

Requests may be delivered personally to the Library, Building 12, Consolidated Federal Law Enforcement Training Center, Glynco, Georgia.

3. *Requests for amendment of records.* Initial determinations under 31 CFR 1.27 (a) through (d) as to whether to grant requests to amend records for the Consolidated Federal Law Enforcement Training Center will be made by the head of the organizational unit having immediate custody of the records or his delegate. Requests for amendment of records should be addressed as indicated in the appropriate system notice in "Notices of Records Systems" published by the General Services Administration. Requests for information and specific guidance on where to send such requests should be addressed to:

Privacy Act Amendment Request, Consolidated Federal Law Enforcement Training Center, Glynco, Georgia 31520.

4. *Administrative appeal of initial determination refusing to amend record.* Appellate determinations under 31 CFR 1.27(e) with respect to records of the Consolidated Federal Law Enforcement Training Center will be made by the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury (including extensions of time on appeal) or the delegate of such officer, as limited by 5 U.S.C. 552a(d) (2) and (3). Appeals made from initial determinations refusing to amend records made by mail should be addressed as indicated in the letter of initial decision or to:

Privacy Act Amendment Appeal, CFLETC, Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3448, Washington, D.C. 20220.

Appeals may be delivered personally to the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Room 3448, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C.

5. *Statements of disagreement.* "Statements of Disagreement" pursuant to 31 CFR 1.27(e)(4)(i) shall be filed with the official signing the notification within 35 days of the date of such notification and should be limited to one page.

6. *Service of process.* Service of process will be received by the General Counsel of the Department of the Treasury or his delegate and shall be delivered to such officer at the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

7. *Annual notice of systems of records.* The annual notice of systems of records required by 5 U.S.C. 552a(e) (4) with respect to records maintained by the Consolidated Federal Law Enforcement Training Center is set forth in the General Services Administration publication entitled "Notices of Records Systems". Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27, and locations for access are indicated in the notice for the pertinent system.

# PART 2—CLASSIFICATION, DOWNGRADING, DECLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

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AUTHORITY: Executive Order 12065 and Information Security Oversight Office Directive.

SOURCE: 43 FR 60448, Dec. 28, 1978, unless otherwise noted.

## Subpart A—Original Classification

### § 2.1 Definitions.

(a) "Original classification" as used in these regulations means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, and a designation of the level of classification.[1]

(b) "Top Secret" shall be applied only to information, the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(c) "Secret" shall be applied only to information, the unauthorized disclosure of which could reasonably to expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(d) "Confidential" shall be applied to information, the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security. Examples of identifiable damage include the compromise of information which indi-

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[1] Parenthetical references are to related sections of Executive Order 12065.

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cates the strength of ground, air, and naval forces in the United States and overseas areas; disclosure of technical information used for training, maintenance, and inspection of classified munitions of war; revelation of performance characteristics, test data, design, and production data on munitions of war.

### § 2.2 Classification authority.

(a) The authority to originally classify national security information as Top Secret, Secret or Confidential within the Department of the Treasury may be exercised by the Deputy Secretary, the Under Secretary (Monetary Affairs), the Under Secretary, the General Counsel, the Assistant Secretary (International Affairs), the Fiscal Assistant Secretary, the Assistant Secretary (Administration), the Assistant Secretary (Legislative Affairs), the Assistant Secretary (Enforcement and Operations), the two Executive Assistants to the Secretary, the Executive Assistant to the Deputy Secretary, the Executive Secretary, the Special Assistant to the Secretary (National Security) and the Special Assistant (Intelligence and Terrorism) to the Assistant Secretary (Enforcement and Operations). The authority inheres in the office and may be exercised by a person acting in that office. These officials are not authorized to delegate authority to classify information as Top Secret or Secret, but may delegate authority to classify information as Confidential.

(b) The authority to originally classify national security information as Secret or Confidential within the Department of the Treasury may be exercised by the Commissioner, Internal Revenue Service; the Assistant Secretary (Tax Policy); the Director, Bureau of Alcohol, Tobacco and Firearms; the Commissioner, U.S. Customs Service; the Director, Bureau of Engraving and Printing; and the Director, U.S. Secret Service. This authority is not redelegable.

(c) The authority to originally classify national security information as Confidential within the Department of the Treasury may be exercised by the Assistant Secretary (Domestic Finance); the Assistant Secretary (Economic Policy); the Assistant Secretary (Public Affairs); the Comptroller of the Currency; the Commissioner, Bureau of Government Financial Operations; the Commissioner, Bureau of the Public Debt; the Director, Bureau of the Mint; and the Director, Federal Law Enforcement Training Center. Officials authorized to classify information as Confidential can not redelegate such authority.

(d) Delegations of original Confidential classification authority shall be in writing and shall be reported in writing to the Assistant Secretary (Administration). These delegations shall be limited to the minimum number absolutely required for efficient administration. Periodic reviews of such delegations shall be made to insure that the officials so designated have demonstrated a continuing need to exercise such authority.

### § 2.3 [Reserved]

### § 2.4 Record requirements.

The Assistant Secretary (Administration) shall maintain a listing by name and position title of the officials in the Office of the Secretary who are authorized under these regulations to originally classify information as Top Secret, Secret or Confidential. An official within the Office of the Secretary with Top Secret classification authority shall report in writing to the Assistant Secretary (Administration) the names and position titles of the officials designated by that official in writing to have original Confidential classification authority. The head of each bureau shall maintain a similar listing of the officials in his/her bureau authorized to apply an original confidential classification and shall furnish a copy of each listing to the Assistant Secretary (Administration). This listing shall be compiled as of January 1, 1979, and updated no less than semi-annually.

### § 2.5 Classification procedure.

(a) No document originated on or after December 1, 1978, may be classified after the Department of the Treasury has received a request for the document under the Freedom of Information Act, as amended, or the

Mandatory Review provisions of the Order (3-5), unless such classification is authorized by the Secretary or Deputy Secretary and unless the classification is consistent with these regulations. Documents originated before December 1, 1978 and subject to such a request may not be classified unless such classification is consistent with the Order and is authorized by the Assistant Secretary (Administration) or by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally, on a document-by-document basis.

(b) Classification may not be restored to documents already declassified and released to the public under the Order or prior Orders.

(c) The fact that the information concerns one or more of the criteria for classification of Section 1-301 of the Order does not create a presumption that the information meets the damage tests of Sections 1-302 and 1-303.

### § 2.6 Foreign government information.

(a) *Identification.* "Foreign government information" is:

(1) Information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence; or

(2) Information produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments requiring that either the information or the arrangement, or both, be kept in confidence. Such a written joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record (1-303 and 6-103).

(b) *Duration of classification for foreign government information.* (1) Foreign government information shall not be assigned a date or event for automatic declassification unless such is specified or agreed to by the foreign government or international organization of governments.

(2) Foreign government information classified after December 1, 1978, shall be assigned a date for review for declassification up to 30 years from the time the information was classified or acquired. (1-402 and 3-404).

### § 2.7 Standard identification and markings.

At the time of original classification, the following shall be shown on the face of paper copies of all classified documents:

(a) *Identity of classifier.* The identity of the classifier, unless also the signer or approver of the document, shall be shown on a "classified by" line; e.g., "Classified by John Doe" or "Classified by Director, XXX" (1-501(a)).

(b) *Date of classification and office of origin.* The date and office of origin on a document at the time of its origination may be considered the date of classification and identification of the office of origin (1-501(b)).

(c) *Date or event for declassification or review.* The date for automatic declassification or for declassification review shall be shown on a "declassify on" or a "review for declassification on" line; e.g., "Declassify on November 1, 1984," or "Declassify on completion of State visit", or "Review for declassification on November 1, 1998" (1-501(c)). An example of such a marking is as follows:

Classified by ______________________
☐ Declassified ☐ Review for
Declassification on ______________________

(d) *Downgrading markings.* When it is determined (e.g., in a classification guide) that a classified document should be downgraded automatically at a certain date or upon a certain event, that date or event shall be recorded on the face of the document; e.g., "Downgraded to Secret on November 1, 1990" or "Downgraded to Confidential on November 1, 1985" (1-5).

(e) *Duration of classification and identity of extension authority.* Each original classification authority shall set a date or event for automatic declassification no more than six years beyond the date of the original classification. Only officials with Top Secret classification authority may classify information for more than six years from the date of the original classification. The identity of the official who authorizes a date for declassification or for review for declassification that is more than 6 years beyond the date of the document's classification shall be shown on the document, unless that official also is the classifier, signer, or approver of the document. This marking shall be shown substantially as follows: "Extended by (Insert name, date and title of position of Top Secret classification authority)". For classification of foreign government information see § 2.6 (1-502).

(f) *Reason for extension.* When classification is extended beyond 6 years, the reason shall be stated on the document either in narrative form or by reference to the Departmental or bureau regulation or guideline which state the reason for extension. The reason shall be shown substantially as follows: "Reason for extension: (State reason or applicable reference)" (1-502).

An example of such a marking is as follows:

Extended by ______
on (date) ______
Reason for extension ______

(g) *Overall and page marking of documents.* The overall classification of a document shall be marked, stamped, or affixed permanently at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest overall classification of the document. In any case, the classification marking of the page shall not supersede the classification marking of portions of the page marked with lower levels of classification (1-501(d)).

(h) *Subjects and titles.* Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipting and reference (1-5).

(i) *Mandatory portion marking.* Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for unclassified shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description sufficient to identify the information that is classified and the level of such classification. A waiver of the portion marking requirement may be granted by the Director of the Information Security Oversight Office. Requests for such waivers shall be made by the Secretary, or his designee to the Director and shall include: (1) Identification of the information or classes of documents for which such waiver is sought, (2) a detailed explanation of why the waiver should be granted, (3) the Department's best judgment as to the anticipated dissemination of the information or class of documents for which waiver is sought, and (4) the extent to which the information subject to the waiver may form a basis for classification of other documents (1-504).

(j) *Material other than documents.* The classification and associated markings prescribed by these regulations shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means (1-5).

(k) *Transmittal documents.* A transmittal document shall indicate on its face the highest classification of the information transmitted by it and the classification, if any, of the transmittal document. For example, an unclassified transmittal document should bear a notation substantially as follows: "Unclassified When Classified Enclosure(s) is Detached" (1-5).

(l) *Marking foreign government information.* Except in those cases where such markings would reveal intelligence information, foreign government information incorporated in United States documents shall, whenever practicable, be identified in such manner as to ensure that the foreign government information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. Documents classifed by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent or appropriate U.S. classification. Foreign government information not classified by a foreign government or an international organization of governments, but provided to the United States in confidence by a foreign government or by an international organization of governments shall be classified at an appropriate level and shall be marked with the U.S. classification accordingly (1-5).

**§ 2.8 Additional markings required.**

In addition to the marking requirements in § 2.7, the following markings shall, as appropriate, be displayed prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification (1-5).

(a) *Restricted data or formerly restricted data.* For classified information containing restricted data or formerly restricted data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be prescribed by the Department of Energy in regulations issued pursuant to the act shall be applied.

(b) *Intelligence sources and methods information.* For classified information involving intelligence sources or methods: "WARNING NOTICE—INTELLIGENCE SOURCES AND METHODS INVOLVED".

(c) *Dissemination and reproduction notice.* For classified information that the originator has determined, pursuant to Section 1-506 of the Order, should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by (Insert appropriate office or official)" (1-506).

**§ 2.9 Abbreviations.**

Classified documents that are transmitted electrically may be marked with abbreviations or codes in a single line to satisfy the requirements of § 2.7 and § 2.8 in a manner consistent with economic and efficient use of electrical transmission systems, provided that the full text represented by each such abbreviation or code and its relation to § 2.7 and § 2.8 is readily available to each expected user of the classified documents affected.

## Subpart B—Derivative Classification

**§ 2.10 Definition.**

"Derivative classification," as used in these regulations, means a determination that information is in substance the same as information that is currently classified, and a designation of the level of classification (2-1).

**§ 2.11 Responsiblity.**

Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide. Persons who apply derivative classification markings should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed the basis for classification. Where checks with originators or other appropriate inquiries show that no classification or a lower classification than originally assigned is appropriate, the derivative document shall be issued as unclassified or shall be marked appropriately (2-101 and 2-102).

### § 2.12 Marking derivatively classified documents.

Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

(a) The classification authority shall be shown on a "classified by" line; e.g., "Classified by (Insert identity of classification guide)" or "Classified by (Insert source of original classification)." If the classification is derived from more than one source, the single phrase "multiple sources" may be shown, provided that identification of each such source is maintained with the file or record copy of the document (2-102(c));

(b) The identity of the office originating the derivatively classified document shall be shown on the face of the document (2-102).

(c) Dates or events for declassification or review shall be carried forward from the source material or classification guide and shown on a "declassify on" or "review for declassification on" line. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source material shall be applied to the new information (2-102(c));

(d) The classification marking provisions of § 2.7 (g)(h) and (i) and also § 2.7(1) are also applicable to derivatively classified documents (2-101(c));

(e) Any additional marking under § 2.8 appearing on the source material shall be carried forward to the new material when appropriate (2-102(c)); and

(f) Any abbreviation or code permitted under § 2.9 may be applied to derivatively classified documents.

### § 2.13 Classification guides.

(a) *Requirements.* Classification guides issued pursuant to Section 2-2 of the Order shall:

(1) Identify the information to be protected, using categorization to the extent necessary to insure that the information involved can be identified readily and uniformly (2-201);

(2) State which of the classification designations (i.e., Top Secret, Secret, or Confidential) applies to the information (2-201);

(3) State the duration of classification in terms of a period of time or future event. When such duration is to exceed 6 years, the reason for such extension shall be provided in the guide. However, if the inclusion of classified reasons would result in a level of classification for a guide that would inhibit its desirable and required dissemination, those reasons need be recorded only on or with the record copy of the guide (2-201); and

(4) Indicate how the designations, time limits, markings, and other requirements of the Order, the Directive and these regulations are to be applied (2-201).

(b) *Review and record requirements.* Each classification guide shall be kept current and shall be reviewed at least once every 2 years. Each office within the Office of the Secretary and the respective offices of each Treasury bureau possessing original classification authority for national security information shall maintain a list of all classification guides in current use by them. A copy of each such classification guide shall be furnished to the Assistant Secretary (Administration) (2-2).

## Subpart C—Downgrading and Declassification

### § 2.14 Record requirements.

Downgrading and declassification authority may be exercised by:

(a) The official authorizing the original classification, a successor in that capacity, or a supervisory official of either.

(b) Any official specifically authorized in writing by an official authorized to originally classify information as Top Secret or Secret. Officials who are authorized to originally classify information as Top Secret or Secret shall maintain a record, copy to the Assistant Secretary (Administration), of individuals or positions who such officials designated as downgrading and declassification authorities.

### § 2.15 Declassification policy.

In making determinations under Sections 3-303 of the Order, officials shall respect the intent of the Order to protect foreign government information and confidential foreign sources (3-303).

### § 2.16 Downgrading, declassification, and upgrading markings.

Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be promptly and conspicuously marked to indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. Earlier classification markings shall be cancelled when practicable (4-102).

### § 2.17 Systematic Review for Declassification.

(a) *Systematic review guidelines.* (1) *U.S. originated information.* Systematic review guidelines shall be kept current through review at least every 2 years, unless earlier review for revision is requested by the Archivist of the United States (3-402).

(2) *Foreign government information.* No later than November 30, 1979, the Department will develop systematic review guidelines for 30 year old foreign government information. These guidelines will be developed in consultation with the Archivist of the United States and in accordance with the provisions of Section 3-304 of the Order. These guidelines shall be kept current through review by the Secretary at least once every 2 years, unless earlier review for revision is requested by the Archivist of the United States. A copy of these guidelines and any revisions thereto shall be furnished to the Information Security Oversight Office. The Department of State will, upon request, provide advice and such assistance as is necessary to effect foreign government coordination of the guidelines (3-404).

(b) *Systematic review procedures*—(1) *Scheduling for systematic review.* Classified nonpermanent records that are scheduled to be retained for more than 20 years need not be systematically reviewed, but shall be reviewed for declassification upon request. All classified Treasury records 20 years old or older, whether held in storage areas by Treasury or in Federal records centers, shall be surveyed to identify those that require scheduling for future disposition. Such scheduling shall be accomplished before December 1, 1980 (3-401).

(2) *Extending classification after review*—(i) *Foreign government information.* The Secretary may extend the classification of foreign government information beyond 30 years, but only in accordance with Sections 3-3 and 3-404 of the Order. This authority may not be delegated. When classification is extended beyond 30 years, a date no more than 10 years later shall be set for declassification or for the next review. Subsequent reviews for declassification shall be set at no more than 10 year intervals (3-404). The burden of proof is on the originating office in the Office of the Secretary or the bureau to show that continued classification is warranted within the terms of the Order, the Directive and these regulations.

(ii) *Notification of addressees.* When classified information is downgraded or declassified in a manner other than originally specified, whether scheduled or exempted, or is upgraded, or is subject to a change in exemption status, the classifier or the custodian of the records shall, to the extent practicable, promptly notify all addressees to whom the information was originally officially transmitted. The recipients of this notification shall notify addressees to whom in turn they have transmitted the classified information.

(iii) *Waivers of further review.* The Secretary may request from the Director of the Information Security Oversight Office a waiver of the 10 year review requirement for both U.S. originated and foreign government information. Such requests shall include a personal certification by the Secretary that the classified information for which the waiver is sought has been systematically reviewed as required, and that a definitive date for declassification could not be determined. Waivers should not be requested unless the results of the review have established an identifiable need to continue classification for a period in excess of 20 additional years. Each request shall include a recommended date or event for subsequent review or automatic declassification (3-401).

(3) *Assistance to the Archivist*—(i) The Secretary shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20 year old U.S. originated information and 30 year old foreign government information accessioned into the National Archives of the United States. Such personnel shall:

(A) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(B) submit to the Secretary recommendations for continued classification that identify documents or specific categories of information so separated.

(ii) The Secretary shall then make the determinations personally and in writing required under Section 3-401 of the Order as to which documents or categories of information require continued protection. The Secretary shall inform the Archivist of the United States of this determination (3-4).

(4) *Special procedures.* Special procedures for systematic review and declassification of classified cryptologic information and classified information concerning the identities of clandestine human agents promulgated in accordance with the provisions of Section 3-403 of the Order shall be binding on the Department of the Treasury.

(5) *Foreign relations series.* In order to permit the editors of Foreign Relations of the United States to meet the mandated goal of publishing 20 years after the event, the Secretary shall assist the editors in the Department of State by facilitating access to appropriate classified material in their custody and by expediting declassification review of items from their files selected for publication (3-4).

### § 2.18 Procedures for mandatory declassification review.

(a) *U.S. originated information*—(1) *Action on an initial request.* Requests for mandatory declassification review shall be directed to the Assistant Director (Physical Security), Office of Administrative Programs. Upon request for declassification, pursuant to Section 3-5 of the Order, the following procedures shall apply:

(i) The Assistant Director (Physical Security), Office of Administrative Programs, shall acknowledge receipt of the request.

(ii) Whenever a request does not reasonably describe the information sought, the requestor shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken (3-501).

(iii) The Assistant Director (Physical Security), Office of Administrative Programs, shall determine the appropriate office to take action on the request and shall forward the request to that office.

(2) *Information in the custody of and under the exclusive declassification authority of the Department.* The appropriate declassification official in the action office having custody of the information shall determine whether, under the declassification provisions of Section 3-3 of the Order, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Departmental Committee on National Security and a notice that such an appeal must be filed within 60 days in order to be considered (3-501).

(3) *Information classified by agencies other than the Department of the Treasury.* When any unit of the Department of the Treasury receives a request for information in its custody that was classified by another agency, the Assistant Director (Physical Security), Office of Administrative Programs, shall be responsible for forwarding the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable, and with its recommendation to withhold any of the information where appropriate. Unless the agency

that classified the information objects on grounds that its association with the information requires protection, the unit that received the request shall also notify the requestor of the referral. After the agency that classified the information completes its review (in coordination with other agencies that have a direct interest in the subject matter), a response shall be sent to the requestor in accordance with the procedures described above (3-501).

(4) *Information classified by Treasury requested from other agencies.* When another agency forwards to Treasury a request for information in that agency's custody that has been classified by Treasury, the Assistant Director (Physical Security), Office of Administrative Programs, shall: (i) advise the other agency as to whether they can notify the requestor of the referral; (ii) review the classified information in coordination with other agencies that have a direct interest in the subject matter; and (iii) respond to the requestor in accordance with the procedures in § 2.18(a)(2). If requested, Treasury's determination shall be communicated to the referring agency (3-501).

(5) *Action on appeal.* Appeals of denials of a request for declassification shall be referred to the Departmental Committee on National Security Information. Within 30 days of receipt of the appeal, the Departmental Committee on National Security Information shall determine whether continued classification is required in whole or in part, notify the requestor of the determination, and make available any information that is declassified and otherwise releasable. If continued classification is required under the provisions of Section 3-3 of the Order, the requestor shall be notified of the reasons thereof. If requested, the Department of the Treasury shall also communicate the appeal determination to any referring agency (3-5 and 5-404(c)).

(6) *Fees.* If the request requires the rendering of services for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C. 483a (1976), such fees may be imposed at the discretion of the Department's service rendering unit (3-501).

(b) *Foreign Government information.* Except as provided hereinafter, requests for mandatory review for the declassification of classified documents that contain foreign government information shall be processed and acted upon in accordance with the provisions of § 2.18(a). If the Department's unit receiving the request is also the unit that initially received or classified the foreign government information, it shall determine whether the foreign government information in the document may be declassified and released after consulting with other agencies that have subject matter interest. If the Department's unit receiving the request is not the unit that received or classified the foreign government information, it shall refer the request to the appropriate agency, for action as described above, including its recommendation to withhold any of the information where appropriate. In those cases where agency policy or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request (3-5).

## Subpart D—Safeguarding

### § 2.19 General.

Information classified pursuant to the Order or prior Orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification (4-1).

### § 2.20 General restrictions on access.

(a) *Determination of need-to-know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in Section 4-3 of the Order, that access is essential to the accomplishment of official Government duties or contractual obligations (4-101).

(b) *Determination of trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by an appropriate agency head based upon appropriate investigations in accordance with applicable standards and criteria (4-101).

### § 2.21 Access by historical researchers, former Presidential appointees and employees of Federal Reserve Banks.

(a) Access may be obtained by (1) written agreements from requestors to safeguard the information to which they are given access as permitted by the Order, the Directive and these regulations, and (2) written consent to the review of their notes and manuscripts for the purpose of determining that no classified information is contained therein. A determination of trustworthiness is a precondition to a requestor's access. If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Offices Appropriations Act, 65 Stat. 290, 31 U.S.C. 483a (1976), the requestor shall be so notified and the fees may be imposed (4-3).

(b) Officials and employees of Federal Reserve Banks may be granted access to classified national security information by the Under Secretary (Monetary Affairs), or his designee when:

(1) The information is classified by a Treasury official or consent for dissemination to the Federal Reserve Bank has been obtained from the originating department.

(2) The Federal Reserve Bank officials or employees need to have knowledge of such information in connection with activities approved by the Under Secretary (Monetary Affairs), or his designee, as being in the interests of the United States; and

(3) The Federal Reserve Bank officials and employees are cleared by the Department of the Treasury under the procedures and standards applicable to Treasury officials and employees.

(4) The Under Secretary (Monetary Affairs), or his designee, shall also be responsible for adjusting or withdrawing the security clearance of any Federal Reserve Bank official or employee who no longer needs access to classified national security information at a particular level in connection with the official performance of duties.

### § 2.22 Dissemination.

Except as otherwise provided by Section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403 (1970 and Suppl V 1975), classified information originating in another agency may not be disseminated outside the Department without the consent of the originating agency (4-403).

### § 2.23 Accountability procedures.

(a) *Top Secret Control Officers.* Each Treasury bureau and the Office of the Secretary shall designate a Top Secret Control Officer. Top Secret Control Officers so designated shall receive, maintain current accountability records of, and dispatch Top Secret information, and shall also conduct an annual physical inventory of all Top Secret information. Top Secret Control Officers shall conduct the required physical inventory in the presence of a disinterested individual and shall complete the same by the first day of May. Any Top Secret document unaccounted for must be reported to the Assistant Secretary (Administration). Top Secret Control Officers shall conduct periodic reviews of Top Secret documents within their control to insure that those Top Secret documents are downgraded or declassified as required.

(b) *Control of Top Secret Information.* (1) A Treasury Department Form TD F 71-01.7 (Top Secret Document Record) shall be attached to the first page or cover of the original and each copy of Top Secret information. The Top Secret Document Record shall be completed by the Top Secret Control Officer, shall identify the Top Secret information attached, and shall serve as a permanent record of the information. All persons, including stenographic and clerical personnel, having access to the information attached to the Top Secret Document Record must sign and date the Treasury Form TD F 71-01.7 prior to accepting responsibility for its custody. The Treasury Form TD F 71-01.7 shall indicate those individuals to whom only oral disclosure is made. The Top Secret Document Record shall remain attached to the Top Secret information until it is either transferred to another U.S. Government agency, downgraded, declassified or destroyed. Whenever any one of these actions is taken, the Top Secret Control Officer shall record the action on the Top Secret Document Record and retain it for a period of three years at which time it may be destroyed.

(2) Top Secret documents shall be sequentially numbered in a calendar year series by Top Secret Control Officers as received by them, and the number shall be posted to the Top Secret document, Treasury Form TD F 71-01.7 and Treasury Form TD F 71-01.5 Revised (Classified Document Accountability Record).

(3) Top Secret Control Officers shall maintain current records of persons within their respective office or bureau who are cleared for access to Top Secret information.

(c) *Waiver.* The Director of the Information Security Oversight Office may grant a waiver with respect to the requirement of an annual inventory for storage systems involving large volumes of information, if security measures with respect to such storage systems are adequate to prevent access by unauthorized persons (4-103).

(d) *Accountability of classified information.* Treasury Department Form TD F 71-01.5 (Classified Document Accountability Record) shall be the exclusive classified document accountability record for use within the Department of the Treasury. No other logs or records shall be required except for the use of Treasury Form TD F 71-01.7 for Top Secret information. Form TD F 71-01.5 shall be used for single or multiple document receipting, internal and external routing, and as a certificate of destruction. The inclusion of classified information on Form TD F 71-01.5 is prohibited. In the event the subject title is classified, a recognizable short title shall be used, e.g., first letter of each letter word in the subject title. Several items may be transmitted to the same addressee under the cover of one Form TD F 71-01.5. When the original and/or copies of the document are destroyed, the destruction certificate section of the form shall be completed to include the date and method of destruction and signed by the individuals accomplishing the destruction. Form TD F 71-01.5 may be destroyed three years after the date of the final disposition of the document.

(1) *Top Secret information.* Top Secret information shall be subject to a continuous receipt system regardless of how brief the period of custody. Treasury Form TD F 71-01.5 shall be used for this purpose. Top Secret accountability records shall be maintained by Top Secret Control Officers separately from the accountability records of other classified information.

(2) *Secret information.* Receipt on Treasury Form TD F 71-01.5 shall be required for transmission of Secret information between bureaus, offices and separate agencies. Responsible officials shall determine administrative procedures required for the internal control within the respective offices or bureaus. The volume of classified information handled and personnel resources available must be considered in determining the practical balance between security measures imposed and the attainment of operating efficiency.

(3) *Confidential information.* Receipts for Confidential information shall not be required unless the originator clearly indicates that receipting is necessary.

(e) *Restraint on reproduction.* Documents or portions of documents containing Top Secret information shall not be reproduced without the consent of the originating office and any reproduction so authorized must be appropriately controlled. The authority for reproduction shall be noted on the copy from which the reproduction is made. The office reproducing Top Secret information shall place this information under top Secret control and shall maintain appropriate records to reflect the number of copies reproduced and shall observe all other requirements concerning the control of the distribution of such copies. The reproduction of Secret information shall be placed under the same control as the parent document. Confidential documents may be reproduced without permission of the originating official, office or department. However, all classified information shall be reproduced sparingly and any stated prohibition against reproduction shall be strictly adhered to. The number of copies of documents containing classified information shall be kept to the absolute minimum required to meet operational needs in order to decrease the risk of compromise, administrative burden and to reduce storage costs.

### § 2.24 Storage.

Classified information shall be stored only in facilities or under conditions adequate to prevent unauthorized persons from gaining access to it (4-103).

(a) *Top Secret.* Top Secret information shall be stored in a GSA-approved, safe-type, steel file cabinet having a built-in, three-position, changeable dial-type combination lock or within an approved vault, or vault-type room, or in other storage facility that meets the standards for Top Secret established under the provisions of § 2.24(c). In addition, the designated security officer of each bureau or the Office of the Secretary shall prescribe such additional supplementary controls as are deemed appropriate to restrict unauthorized access to areas where such information is stored (4-103).

(b) *Secret and Confidential.* Secret and Confidential information shall be stored in a manner and under the conditions prescribed for Top Secret information, or in a container or vault that meets the standards for Secret or Confidential, established pursuant to the provisions of § 2.24 (c) and (d) (4-103).

(c) *Standards for security equipment.* The Directive requires the General Services Administration, in coordination with the Department, to establish and publish uniform standards, specifications, and supply schedules for containers, vaults, alarm systems, and associated security devices suitable for the storage and protection of all categories of classified information. The Department may, however, establish more stringent standards for its own use. Whenever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and shall, to the maximum extent practicable, be of the type designated on the Federal Supply Schedule, General Services Administration (4-103).

(d) *Exception to standards for security equipment*—(1) Secret and Confidential information may also be stored in a steel filing cabinet having a built-in, three-position, dial-type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three-position, changeable, combination padlock approved by GSA for the purpose. The storage of Secret information in the steel filing cabinets described above requires the use of such supplementary controls as the designated security officer of each bureau or the Office of the Secretary deems necessary to achieve the degree of protection warranted by the sensitivity of the information involved (4-103).

(2) For protection of bulky Secret and Confidential material (for example, weaponry containing classified components) in magazines, strong rooms, or closed areas, access openings may be secured by changeable combination or key-operated, high-security padlocks approved by GSA. When key-operated padlocks are used, keys shall be controlled in accordance with § 2.24(f) (4-103).

(e) *Combinations*—(1) *Equipment in service.* Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever a combination has been subjected to possible compromise, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned (4-103).

(2) *Safe combination records.* Combinations to equipment containing clas-

sified information shall be recorded on Treasury Form No. 4032 (Security Container Information). Such forms shall be completed in their entirety. Part 1 of the Form shall be posted on the interior of the top or locking drawer of the safekeeping equipment concerned. The names, addresses and home telephone numbers of personnel responsible for the combination and the classified information stored therein must be posted on Part 1 of the Form. Part II shall be properly completed, inserted in the envelope (Part III) provided and forwarded to the designated central repository for safe combinations. Parts II and III shall show the appropriate classification marking.

(3) *Safe or cabinet security record.* Each piece of equipment used for the storage of classified information will have attached conspicuously to the outside a General Services Administration Optional Form 62 (Safe or Cabinet Security Record) on which an authorized employee will record the time and date each time they unlock or lock the security equipment, followed by their initials. In addition, at the close of each working day or when a security container is locked at times other than normal duty hours, the person locking the security container will be required to check it to insure that it is locked, and will record the time and date the security container was checked followed by their initials. The checking procedure stated above applies for each normal working day regardless of whether or not the security container was opened on that particular day. A security container will not be left unattended until it has been locked by an authorized person and checked by a second person. Additional safe security requirements are:

(i) Reversible "Open-Closed" signs, available through normal supply channels, shall be used as additional reminders on each security container used for the storage of classified information.

(ii) The tops of security containers shall be kept free of all extraneous matter.

(4) *Equipment out of service.* When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50-25-50. Combination padlocks shall be reset to the standard combination 10-20-30 (4-103).

(5) *Classified document cover sheets.* In order to alert personnel to the fact that a document or folder is classified and to protect it from unauthorized scrutiny, cover sheets, available through normal supply channels, will be used to cover classified documents when in use. Classified document cover sheets will be removed before classified information is filed. Classified document cover sheets will be removed from classified documents prior to transmission except when the transmission is made internally within a headquarters by courier, messenger or by personal contact.

(6) *Report of loss or compromise.* Any employee of the Department of the Treasury who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to the appropriate bureau head or his designee who shall take appropriate action forthwith. In turn, the originating department and any other interested department shall be notified about such loss or possible compromise.

(7) *Inquiry.* If the loss or possible compromise occurs in any Treasury bureau, or the Office of the Secretary, the Assistant Secretary (Administration) shall be notified. He shall then direct an immediate inquiry to be conducted for the purpose of taking corrective measures and assessing damages. Based on the results of the inquiry, recommendations shall be made to the Assistant Secretary (Administration) as to the appropriate administrative, disciplinary, or legal action to be taken (4-103).

(f) *Keys.* The Office of the Secretary and all respective Treasury bureaus shall each individually establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afforded the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container (4-103).

(g) *Responsibilities of custodians.* Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever it is not in use or under the direct supervision of authorized persons. Custodians shall follow procedures that insure unauthorized persons do not gain access to classified information (4-103).

(h) *Inspections.* Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. Security officers shall insure that periodic inspections are made to determine whether procedural safeguards prescribed by these regulations are in effect at all times (4-103).

### § 2.25 Transmittal.

(a) *General.* Classified information shall be transmitted between Treasury bureaus and buildings and outside the Department only in accordance with the requirements of these regulations. Classified information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt shall be attached to or enclosed in the inner cover. Confidential information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. The receipt shall be immediately signed by the recipient and returned to the sender. Within the Main Treasury Building and within each separate bureau building, such information may be transmitted between offices by direct contact of the officials concerned in a single sealed opaque envelope with no security classification category being shown on the outside of the envelope. Classified information shall never be delivered to unoccupied rooms or offices (4-103).

(b) *Transmittal of Top Secret.* The transmittal of Top Secret information shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system specially created for that purpose, or over authorized secure communications circuits (4-103).

(c) *Transmittal of Secret.* The transmittal of Secret information shall be effected in the following manner:

(1) *The 50 States, District of Columbia, and Puerto Rico.* Secret information may be transmitted within and between the 50 States, District of Columbia, and Puerto Rico by one of the means authorized for Top Secret information, by the U.S. Postal Service registered mail, or by protective services provided by U.S. air or surface commercial carriers under such conditions as may be prescribed by the Secretary (4-103).

(2) *Canadian Government Installations.* Secret information may be transmitted to and between the United States Government and Canadian Government installations in the 50 States, the District of Columbia, and Canada by United States and Canadian registered mail with registered mail receipt (4-103).

(3) *Other areas.* Secret information may be transmitted from, to, or within areas other than those specified in (1) and (2) above by one of the means established for Top Secret information, or by U.S. registered mail through Army, Navy, or Air Force Postal Service Facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government contract vehicles or aircraft, ships of the United States Navy, civil service manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately

cleared may be designated as escorts (4-103).

(d) *Transmittal of Confidential information.* Confidential information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by U.S. Postal Service certified, first class, or express mail service. Outside these areas, Confidential information shall be transmitted only as is authorized for higher classifications (4-103).

(e) *Transmission by personnel in travel status.* For personnel in travel status, see Treasury Directive TD 71-10.A.

### § 2.26 Telecommunications transmissions.

Classified information shall not be communicated by telecommunications transmission, except as may be authorized by these regulations with respect to the transmission of classified information over authorized secure communications circuits or systems.

### § 2.27 Destruction.

(a) *Methods of destruction.* When information classified under the authority of the Order is to be destroyed, destruction shall be by burning, mulching, or shredding in the presence of an individual or individuals specifically designated by the appropriate bureau head.

(b) *Approval of use of mulching and shredding machines.* Prior to a bureau obtaining a mulching or shredding machine, the Office of Administrative Programs, Assistant Director (Physical Security) shall approve the use of such a machine.

(c) *Destruction by burning.* Any classified information to be destroyed by burning shall be torn and placed in containers designated as burnbags and shall be clearly and distinctly labeled "Burn." Burnbags awaiting destruction shall be protected by security safeguards commensurate with the classification or control designation of the information involved.

(d) *Records of destruction.* Each bureau head shall insure that appropriate accountability records are maintained for his bureau to reflect the destruction of classified national security information.

(e) *Destruction of nonrecord information.* Nonrecord classified information such as extra copies and duplicates, including shorthand notes, preliminary drafts, used carbon paper and other material of similar temporary nature, shall also be destroyed by burning, mulching, or shredding as soon as it has served its purpose, but no records of such destruction need be maintained.

## Subpart E—Implementation and Review

### § 2.28 Departmental Committee on National Security.

There is hereby established a Departmental Committee on National Security Information whose membership shall be comprised of the Assistant Secretary (Administration) who shall serve as chairman and such other officials as shall be designated by a Treasury Department Order. The functions of the Committee include:

(a) The review of all appeals under these regulations from decisions not to declassify documents, except with respect to documents over which the Secretary has extended their classification to more than 20 years;

(b) The review of suggestions and complaints regarding the administration of these regulations;

(c) The responsibility for establishing the Department's policies with respect to the enforcement of the Order, the Directive and these regulations.

### § 2.29 Departmental administration.

(a) The Assistant Secretary (Administration) shall enforce the Order, the Directive and these regulations, and establish, coordinate and maintain active training, orientation and inspection programs for employees concerned with classified information.

(b) The Assistant Secretary (Administration) shall establish and maintain a Data Index System control file for all national security information originally classified within the Department.

### § 2.30 Bureau administration.

Each bureau head and the Office of the Secretary shall designate a security officer and an official to coordinate and supervise the activities applicable to that bureau to maintain the programs of training, orientation, and inspection established by the Office of Administrative Programs, Assistant Director (Physical Security) and to carry out related activities of the Order.

### § 2.31 Briefing of employees.

All new employees concerned with classified information shall be afforded a security briefing regarding the Order, the Directive and these regulations. Employees concerned with classified information pertaining to intelligence sources, methods, operations, or plans shall be required to read and sign a Security Agreement. All new employees afforded a security briefing shall be provided with copies of applicable laws and pertinent security regulations setting forth the procedures for the protection and disclosure of classified information. All employees concerned with classified information shall receive periodic reorientation briefings during their employment which are designed to impress upon them their responsibility for exercising care and vigilance in complying with the provisions of the Order, the Directive and implementing regulations.

### § 2.32 Debriefing of employees.

Any person possessing a security clearance, at any level of employment and without exception, when terminating employment or contemplating temporary separation for a sixty-day period or more, shall be debriefed concerning their continued responsibility to safeguard classified information, and reminded that civil and criminal penalties (including civil service and Departmental disciplinary procedures) are applicable to the violation of these regulations.

### § 2.33 Applicability.

(a) Any individual, at any level of employment, determined to have been responsible for any unauthorized release or disclosure of national security information shall be notified that his/her action is in violation of the Order, the implementing Information Security Oversight Office Directive, or these regulations. In addition, he/she shall be subject to prompt and stringent action including, as appropriate in the particular case, a warning notice, formal reprimand, suspension without pay, or dismissal, in accordance with applicable personnel rules, regulations and procedures. Where a violation of criminal statutes may be involved, any such case shall be promptly referred to the Department of Justice.

(b) Repeated abuse of the classification process, either by unnecessary or over-classification, or repeated failure, neglect or disregard of established requirements for safeguarding classified information by any officer or employee shall be grounds for appropriate adverse or disciplinary action. Such action may include a warning notice, formal administrative reprimand, suspension without pay, or dismissal, as appropriate in the particular case, in accordance with applicable personnel rules, regulations and procedures.

### § 2.34 Disciplinary action.

After an affirmative adjudication of a security violation and as the occasion demands, reports of accountable security violations may be placed in the employee's official personnel folder and security file. The security official of the bureau or office concerned shall recommend to the respective management official or bureau head that disciplinary action be taken when such action is indicated. However, should circumstances warrant, the Department may take action under provisions of these regulations, the Order, any implementing Information Security Oversight Office Directives, Executive Order 10450, as amended, or any superseding applicable Executive Order.

### § 2.35 Challenges to classification.

Holders of classified information are encouraged to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. Such challenges or appeals relating thereto shall be acted on within 30 days of receipt and the challenger notified of the results. When requested, anonymity of the challenger shall be preserved (5-404(d)).

## Subpart F—General Provisions

**§ 2.36 Notification.**

Notification of unscheduled changes in classification or changes in duration of classification may be by general rather than specific notice (4-102).

**§ 2.37 Posted notice.**

If prompt remarking of large quantities of information would be unduly burdensome, the custodian may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items permanently withdrawn from such storage units shall be marked promptly in accordance with the marking provisions herein. However, when information subject to a posted downgrading, upgrading, or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without marking if the notice is attached to or remains with each shipment (4-102).

# PART 3—CLAIMS REGULATIONS

### Subpart A—Claims Under the Federal Tort Claims Act

Sec.
3.1 Scope of regulations.
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### Subpart B—Claims Under the Small Claims Act

3.20 General.
3.21 Action by claimant.
3.22 Legal review.
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AUTHORITY: 28 U.S.C. 2672; 28 CFR Part 14.

SOURCE: 35 FR 6429, Apr. 22, 1970, unless otherwise noted.

## Subpart A—Claims Under the Federal Tort Claims Act

**§ 3.1 Scope of regulations.**

(a) The regulations in this part shall apply to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2672, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the Department while acting within the scope of his office or employment, under circumstances where the United States if a private person, would be liable to the claimant for such damage, loss, injury, or death, in accordance with the law of the place where the act or omission occurred. The regulations in this subpart do not apply to any tort claims excluded from the Federal Tort Claims Act, as amended, under 28 U.S.C. 2680.

(b) Unless specifically modified by the regulations in this part, procedures and requirements for filing and handling claims under the Federal Tort Claims Act shall be in accordance with the regulations issued by the Department of Justice, at 28 CFR Part 14, as amended.

**§ 3.2 Filing of claims.**

(a) *When presented.* A claim shall be deemed to have been presented upon the receipt from a claimant, his duly authorized agent or legal representative of an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, or per-

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sonal injury, or death alleged to have occurred by reason of the incident.

(b) *Place of filing claim.* Claims shall be submitted directly or through the local field headquarters to the head of the bureau or office of the Department out of whose activities the incident occurred, if known; or if not known, to the General Counsel, Treasury Department, Washington, D.C. 20220.

(c) *Contents of claim.* The evidence and information to be submitted with the claim shall conform to the requirements of 28 CFR 14.4.

### § 3.3 Legal review.

All claims shall be forwarded to the legal division of the bureau or office out of whose activities the claim arose. The claim, together with the reports of the employee and the investigation, shall be reviewed in the legal division which shall thereupon make a recommendation that the claim be approved, disapproved, or compromised, and shall advise on the need for referral of the claim to the Department of Justice. This recommendation and advice, together with the file, shall be forwarded to the head of the bureau or office or his designee.

### § 3.4 Approval of claims not in excess of $25,000.

(a) Claims not exceeding $25,000 and not otherwise requiring consultation with the Department of Justice pursuant to 28 CFR 14.6(b) shall be approved, disapproved, or compromised by the head of the bureau or office or his designee, taking into consideration the recommendation of the legal division.

### § 3.5 Limitations on authority to approve claims.

(a) All proposed awards, compromises or settlements in excess of $25,000 require the prior written approval of the Attorney General.

(b) All claims which fall within the provisions of 28 CFR 14.6(b) require referral to and consultation with the Department of Justice.

(c) Any claim which falls within paragraph (a) or (b) of this section shall be reviewed by the General Counsel. If the claim, award, compromise, or settlement receives the approval of the General Counsel and the head of the bureau or office or his designee, a letter shall be prepared for the signature of the General Counsel transmitting to the Assistant Attorney General, Civil Division, Department of Justice, the case for approval or consultation as required by 28 CFR 14.6. Such letter shall conform with the requirements set forth in 28 CFR 14.7.

### § 3.6 Final denial of a claim.

The final denial of an administrative claim shall conform with the requirements of 28 CFR 14.9 and shall be signed by the head of the bureau or office, or his designee.

### § 3.7 Action on approved claims.

(a) Any award, compromise, or settlement in an amount of $2,500 or less shall be processed for payment from the appropriations of the bureau or office out of whose activity the claim arose.

(b) Payment of an award, compromise, or settlement in excess of $2,500 and not more than $100,000 shall be obtained by the bureau or office by forwarding Standard Form 1145 to the Claims Division, General Accounting Office.

(c) Payment of an award, compromise, or settlement in excess of $100,000 shall be obtained by the bureau by forwarding Standard Form 1145 to the Bureau of Government Financial Operations, Department of the Treasury, which will be responsible for transmitting the award, compromise, or settlement to the Bureau of the Budget for inclusion in a deficiency appropriation bill.

(d) When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee.

(e) When the use of Standard Form 1145 is required, it shall be executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(f) Acceptance by the claimant, his agent, or legal representative, of any award, compromise or settlement made pursuant to the provisions of section 2672 or 2677 of title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

[35 FR 6429, Apr. 22, 1970, as amended at 39 FR 19470, June 3, 1974]

### § 3.8 Statute of limitations.

Claims under this subpart must be presented in writing to the Department within 2 years after the claim accrued.

## Subpart B—Claims Under the Small Claims Act

### § 3.20 General.

The Act of December 28, 1922, 42 Stat. 1066, the Small Claims Act, authorized the head of each department and establishment to consider, ascertain, adjust, and determine claims of $1,000 or less for damage to, or loss of, privately owned property caused by the negligence of any officer or employee of the Government acting within the scope of his employment. The Federal Tort Claims Act superseded the Small Claims Act with respect to claims that are allowable under the former act. Therefore, claims that are not allowable under the Federal Tort Claims Act, for example, claims arising abroad, may be allowable under the Small Claims Act.

### § 3.21 Action by claimant.

Procedures and requirements for filing claims under this section shall be the same as required for filing claims under the Federal Tort Claims Act as set forth in Subpart A of this part.

### § 3.22 Legal review.

Claims filed under this subpart shall be forwarded to the legal division of the bureau or office out of whose activities the claim arose. The claim, together with the reports of the employee and the investigation, shall be reviewed in the legal division which shall thereupon make a recommendation that the claim be approved, disapproved or compromised.

### § 3.23 Approval of claims.

Claims shall be approved, disapproved, or compromised by the head of the bureau or office or his designee, taking into consideration the recommendation of the legal division.

### § 3.24 Statute of limitations.

No claim will be considered under this subpart unless filed within 1 year from the date of the accrual of said claim.

## PART 4—EMPLOYEES' PERSONAL PROPERTY CLAIMS

Sec.
4.1 General.
4.2 Proper claimants.
4.3 Allowable claims.
4.4 Claims not payable.
4.5 Factors to be considered in determining claims.
4.6 Evidence to be submitted by claimant.
4.7 Claims involving carrier and insurer.
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4.9 Application to claims not previously adjusted.
4.10 Statute of limitations.
4.11 Attorney's fees.
4.12 Bureau implementation.

AUTHORITY: Sec. 3(b), 78 Stat. 767, as amended; 31 U.S.C. 241(b).

SOURCE: 34 FR 12577, Aug. 1, 1969, unless otherwise noted.

### § 4.1 General.

The Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240-243, authorizes the Secretary of the Treasury to settle and pay (including replacement in kind) claims of officers or employees of the Department, amounting to not more than $15,000, for damage to, or loss of, personal property incident to their service, where possession of such property is determined to be reasonable, useful, or proper under the circumstances.

[34 FR 12577, Aug. 1, 1969, as amended at 42 FR 60741, Nov. 29, 1977]

### § 4.2 Proper claimants.

(a) The following are proper claimants:

(1) Officers and employees of the Treasury Department.

(2) Former employees of the Treasury Department whose claims arose out of incidents occurring before their separation.

(3) The authorized agent or legal representative of persons in paragraphs (a) (1) and (2) of this section.

(4) Survivors of persons in paragraphs (a) (1) and (2) of this section, in the following order of precedence:

(i) Spouse.

(ii) Children.

(iii) Father or mother, or both.

(iv) Brothers or sisters, or both.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

### § 4.3 Allowable claims.

The following claims are payable when the damage to or loss of the claimant's property occurs incident to his service under any of the following circumstances:

(a) *Losses in Government quarters.* Where personal property is damaged or lost by fire, flood, hurricane, or other serious occurrence while located at: (1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government; (2) quarters outside the 50 States and the District of Columbia occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; and (3) any warehouse, office, hospital, baggage dump, or other place (except quarters) designated by superior authority for the reception of the property.

(b) *Transportation losses.* Where personal property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a carrier, an agent or agency of the Government, or private conveyance.

(c) *House trailers.* Claims for loss of or damage to house trailers and their contents while in storage on Government property pursuant to shipment under orders are payable under paragraph (a)(3) of this section. Claims for loss of or damage to house trailers and their contents arising incident to shipment are payable under paragraph (b) of this section: *Provided,* That, when transported by other than the employee or an agent or agency of the Government, the carrier must have operating rights approved by the Interstate Commerce Commission in interstate commerce or under applicable State regulations when shipment is within a single State. Claims for structural damage to house trailers, other than that caused by collison, and damage to contents of house trailers resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the trailer and that the trailer was not overloaded. Claims for loss of or damage to tires mounted on trailers will not be entertained except in cases of collision, theft, or vandalism.

(d) *Marine disaster.* Where personal property is damaged, lost, destroyed, or abandoned in consequence of shipwreck, fire or other accident on board, collision, sinking, capsizing, stranding of a vessel, or perils of the sea.

(e) *Aircraft disaster.* Where personal property is damaged, lost, destroyed, or abandoned, in consequence of hazards as a result of an aircraft disaster or accident.

(f) *Enemy action.* Where property is lost, abandoned, damaged, or destroyed by: (1) Enemy action or threat of such action; (2) combat, or movement in the field which is part of a combat mission; (3) guerrilla, organized brigandage or other belligerent activities whether or not the United States is involved; or (4) unjust confiscation by a foreign power or its nationals.

(g) *Property subjected to extraordinary risks.* When property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to: (1) Performance of duties in connection with civil disturbances, public disorder, law enforcement activities, or public disaster; (2) efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; and (3) abandonment or destruction of property by reason of military emergency or by order of superior authority.

(h) *Property used for benefit of the Government.* Where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(i) *Money deposited for safekeeping.* Where personal funds which were accepted by responsible Government personnel with apparent authority to receive them for safekeeping, deposit, transmittal, or other authorized disposition, were neither applied as directed by the owner nor returned to him.

(j) *Motor vehicles.* Where automobiles and other motor facilities were damaged or lost in overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels or by Government bills of lading on commercial vessels, and includes storage, unloading and off-loading incident thereto.

(k) *Clothing.* Where clothing and accessories worn on the person are damaged or lost:

(1) During the performance of official duties in an unusual or extraordinary risk situation;

(2) In cases involving emergency action required by natural disaster, such as fire, flood, hurricane; or enemy or other belligerent action;

(3) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant as required by his job situation; or

(4) When using a motor vehicle incidental to service. Accessories would include eyeglasses, hearing aids, and dentures.

(l) *Borrowed property.* Where borrowed property has been damaged or lost.

### § 4.4 Claims not payable.

Claims otherwise within the scope of these regulations are nevertheless not payable when the damage or loss of personal property incident to service involves any of the following:

(a) *Money and currency.* Claims are not payable for money or currency except:

(1) When deposited with authorized personnel as contemplated by § 4.3(i).

(2) When lost incident to a marine or aircraft disaster.

(3) When lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked.

(4) When stolen from the temporary quarters or possession of an employee who by reason of his assignment is required to carry money or currency. In instances of theft from temporary quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked.

Reimbursement for loss of money or currency will be limited to an amount determined to have been reasonable for the claimant to have had in his possession at the time of the incident.

(b) *Small items of substantial value.* Claims are not payable for small articles of substantial value and money when shipped with household goods or as unaccompanied baggage; or for articles easily pilfered which usually are worn or carried, including watches and expensive jewelry such as rings, pins, brooches, necklaces, and bracelets. These limitations do not apply to the articles described when the loss is cognizable under paragraphs (1) and (2) of § 4.3(a).

(c) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of his immediate household.

This prohibition includes articles acquired at the request of others, and articles for sale.

(d) *Articles of extraordinary value.* Claims are not payable for expensive articles of gold, silver, other precious metals, paintings, antiques other than bulky furnishings, relics, and other articles of extraordinary value when shipped with household effects by ordinary means, or as unaccompanied baggage at normal released valuation. Claims for such articles are payable when their loss is incident to shipment by expedited mode in accordance with current Joint Travel Regulations. This prohibition does not apply to baggage checked or in the personal custody of the claimant or his agent provided reasonable protection or security measures have been taken.

(e) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(f) *Government property.* Claims are not payable for property owned by the United States, except where the claimant is responsible for the property to an agency of the Government other than the Treasury Department.

(g) *Motor vehicles.* Claims for motor vehicles, except as provided under § 4.3 (j), will ordinarily not be paid. However, meritorious claims for losses of motor vehicles may be recommended for consideration and approval for payment in exceptional cases.

(h) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(i) *Losses at quarters.* Claims are not payable for losses (including theft) at quarters not assigned or otherwise provided in kind occupied by the claimant within the United States.

(j) *Losses recoverable from insurer.* Claims are not payable for losses or any portion thereof which have been recovered or are recoverable from an insurer, except as permitted under § 4.7.

(k) *Losses recoverable from carrier.* Claims are not payable for losses or any portion thereof which have been recovered or are recoverable from a carrier, except as permitted under § 4.7.

(l) *Losses recoverable from contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable under contract, except as permitted under § 4.7.

(m) *Negligence of claimant.* Claims are not payable for loss of personal property caused in whole or in part by any negligence or wrongful act on the part of the claimant, or of his agent or employee.

(n) *Property used for business.* Claims are not payable for property normally used for business or profit.

(o) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this paragraph. However, where, in the opinion of the approving officer, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value and/or the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(p) *Violation of directives.* Claims are not payable for property acquired, possessed, or transported, in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

(q) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, his agent, or employee has intentionally misrepresented an item claimed, as to cost, condition, cost to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper it will be paid. This does not preclude appropriate disciplinary action if warranted.

(r) *Minimum claims.* Claims are not payable for damage to or loss of property in an amount less than $10.

### § 4.5 Factors to be considered in determining claims.

(a) Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of loss or damage was incident to his service. What is reasonable is a question of fact determined in the light of the officer's or employee's rating, together with his duty, job, and station assignment.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for loss or damage is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items and/or expensive items, they should have such property privately insured.

(c) Cost or value: The amount awarded on any item of property will not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange). The amount payable will be determined by applying the principles of depreciation to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; by allowing the cost of repairs when an item is economically repairable, provided the cost of repairs does not exceed the depreciated value of the item; and by deducting salvage value, if appropriate.

(d) Depreciation: Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when lost or damaged beyond economical repair, the time elapsed between the time of acquisition and the date of accrual of the claim.

(e) Appreciation: There will be no allowance for appreciation in the value of the property except that the cost of the item will be adjusted to reflect changes in the purchasing power of the dollar before depreciation is computed. Appreciation will not be allowed solely because the loss occurs or the claimant now resides in an area remote from the place of purchase of the original article.

(f) Expensive articles: Allowance for expensive items (including heirlooms and antiques) or for items purchased at unreasonably high prices will be based on the fair and reasonable purchase price for substitute articles of a similar nature.

(g) Acquisition: Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities.

### § 4.6 Evidence to be submitted by claimant.

The following types of claims require evidence in addition to the statement of facts and circumstances attending the loss:

(a) Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating: (1) Geographical location; (2) whether quarters were assigned or provided in kind by the Government; (3) whether regularly occupied by the claimant; (4) name of authority, if any, who designated the place of storage of the property if other than quarters; (5) measures taken to protect the property; and (6) that the claimant is not a local inhabitant.

(b) Claims for property loss by theft should be accompanied by a statement indicating: (1) Geographical location; (2) facts and circumstances surrounding the loss, including evidence of larceny, burglary, or housebreaking such as breaking and entering, capture of the thief, recovery of part of the stolen goods, etc.; and (3) evidence that the claimant exercised due care in protecting his property prior to the loss including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(c) Claims for transportation losses should be accompanied by the following: (1) Copies of orders authorizing the travel, transportation, or shipment or certificate explaining the absence of orders, and stating their substance; (2) statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of shipping officer, supply officer, or contract packer.

(ii) Date property was turned over.

(iii) Inventoried condition when property was turned over.

(iv) When and where property was packed and by whom.

(v) Date of shipment.

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents.

(vii) Date and place of delivery to claimant.

(viii) Date property was unpacked by carrier, claimant, or Government.

(ix) Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage.

(x) Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss.

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages.

(xii) Total gross, tare, and net weight of shipment.

(xiii) Insurance certificate or policy if losses are privately insured.

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any.

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(d) Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish claimant's right to be, or to have his property, on board.

(e) Claims for property losses due to enemy action, public disaster, public service, or abandonment, should be accompanied by: (1) Copies of orders or other evidence establishing claimant's required presence in the area involved; and (2) a detailed statement of facts and circumstances showing an applicable case enumerated in paragraphs (f) and (g) of § 4.3.

(f) Claims for property losses when the property was used for benefit of the Government should be accompanied by (1) a statement from proper authority that the property claimed was required to be supplied by claimant in the performance of his official duty or occupation at the request or direction of superior authority or by reason of necessity; and (2) evidence that, if the property being used for the benefit of the Government was lost while not in use, that the loss occurred in an authorized storage area.

(g) Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition, should be accompanied by: (1) Name, grade, service number (if any), and address of the person or persons who received the money and any others involved; (2) name and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested; and (3) receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(h) Claims for damage to motor vehicles in transit should be accompanied by a copy of orders or other available evidence to establish claimant's lawful right to have the property shipped, and evidence to establish damage in transit.

### § 4.7 Claims involving carrier and insurer.

(a) Claimant must comply with the following before presenting claims involving a carrier or insurer:

(1) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a concurrent claim against the Government. The claimant may present his claim to the Government immediately

after he has made his demand on the carrier;

(2) Whenever property which is damaged, lost, or destroyed incident to the claimant's service, is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of a concurrent claim against the Government. The claimant may present his claims to the Government immediately after he has made his demand on the insurer.

(b) If the claimant fails to make required demand on the carrier or insurer or make reasonable efforts to collect the amount recoverable, the amount payable under the provisions of these regulations shall be reduced by the maximum amount recoverable. However, no deduction will be made if (1) the circumstances of the claimant's service were such as to preclude timely filing of the claim with the carrier or insurer; and (2) it is determined that a demand would have been impracticable or unavailing in any event.

(c) To expedite the settlement of claims for loss or damage of household effects, a claim may be presented to the Government concurrent with the demand on a carrier and/or insurer.

(d) When any claim is paid by the Department, the claimant will assign to the United States, to the extent of any payment on his claim accepted by him all his rights, title, and interest in any claim he may have against any carrier, insurer or other party arising out of the incident on which the claim against the United States is based. On request, he also will furnish such evidence as may be required to enable the United States to enforce the claim.

(e) After payment of his claim by the United States, if the claimant receives any payment from a carrier, contractor, insurer, or other third party, he will pay the proceeds to the United States to the extent of the payment received by him from the United States.

### § 4.8 Filing of claims.

A claimant should submit his claim in writing on form No. 3079, together with the supporting information required by the form, to his immediate supervisor who shall be responsible for forwarding it to the claims officer or other person designated to handle claims. After the completion of action on the claim by the appropriate official of the bureau, office, service, or division out of whose activities the claim arose, the employee will be notified of the action taken on his claim.

### § 4.9 Application to claims not previously adjusted.

The provisions of these regulations in this part shall apply to all claims arising after August 31, 1964, otherwise within its scope, not heretofore adjusted.

### § 4.10 Statute of limitations.

(a) Claims must be presented in writing within 2 years after the claim accrues except that if the claim accrues in time of war or in time of armed conflict in which the Armed Forces of the United States are engaged, or if such a war or armed conflict intervenes within 2 years after it accrues, and if a good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist, or 2 years after the war or armed conflict is terminated, whichever is earlier. For the purpose of these sections, the dates of beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(b) Claims will be determined to have accrued at such time as the loss or damage is or should have been discovered or ascertained through exercise of due diligence by the claimant, even though such loss or damage may have happened at a prior time.

### § 4.11 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under these regulations shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim.

### § 4.12 Bureau implementation.

The head of each bureau, office, service or division of the Treasury Department may issue such further instructions as he shall deem necessary to implement these regulations in this part in the District of Columbia and in the field, including the designation of the persons to receive and process claims filed by employees.

## PART 5—CLAIMS COLLECTION

Sec.
5.1 Authority.
5.2 Incorporation by reference; scope.
5.3 Designation.
5.4 Application to other statutes.

Authority: Sec. 3, 80 Stat. 309; 31 U.S.C. 952, unless otherwise noted.

Source: 32 FR 452, Jan. 17, 1967, unless otherwise noted.

### § 5.1 Authority.

The regulations of this part are issued under section 3 of the Federal Claims Collection Act of 1966, Pub. L. 89-508, 80 Stat. 308, 309, and in conformity with the Joint Regulations issued under that Act by the General Accounting Office and the Department of Justice prescribing standards for administrative collection, compromise, termination of agency collection action, and referral to the General Accounting Office and to the Department of Justice for litigation, of civil claims by the Government for money or property, 4 CFR Chapter II.

### § 5.2 Incorporation by reference; scope.

The regulations of this part incorporate by this reference all provisions of the Joint Regulations of the General Accounting Office and the Department of Justice, and supplement those regulations by the prescription of procedures and directives necessary and appropriate for Treasury operations. The Joint Regulations and this part do not apply to tax claims nor to any claim as to which there is an indication of fraud or misrepresentation, as described in § 101.3 of the Joint Regulations, unless returned by the Justice Department to the Treasury Department for handling.

### § 5.3 Designation.

The heads of bureaus and offices and their delegates are designated as designees of the Secretary of the Treasury authorized to perform all the duties for which the Secretary is responsible under the foregoing Act and Joint Regulations: *Provided, however,* That no compromise of a claim shall be effected or collection action terminated, except upon the recommendation of the General Counsel, the Chief Counsel of the bureau or office concerned, or the designee of either. Notwithstanding the foregoing proviso, no such recommendation shall be required with respect to the termination of collection activity on any claim in which the unpaid amount of the debt is $100 or less.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 951-953, 4 CFR Chap. II)

[34 FR 5159, Mar. 13, 1969, as amended at 44 FR 9745, Feb. 15, 1979]

### § 5.4 Application to other statutes.

(a) The authority of the Secretary of the Treasury or the head of a bureau or office within the Treasury Department to compromise claims of the United States shall be exercised with respect to claims not exceeding $20,000, exclusive of interest, in conformity with the Federal Claims Collection Act, the Joint Regulations thereunder, and this part, except where standards are established by other statutes or authorized regulations issued pursuant thereto.

(b) The authority of the Secretary of the Treasury or the head of a bureau or office within the Treasury Department to remit or mitigate a fine, penalty or forfeiture shall be exercised in accordance with the standards for remission or mitigation established in the governing statute or in Departmental enforcement policies. In the absence of such standards, the standards of the Joint Regulations shall be followed to the extent applicable.

# PART 6—APPLICATIONS FOR AWARDS UNDER THE EQUAL ACCESS TO JUSTICE ACT

### Subpart A—General Provisions

Sec.
6.1 Purpose of these rules.
6.2 When the act applies.
6.3 Proceedings covered.
6.4 Eligibility of applicants.
6.5 Standards for awards.
6.6 Allowable fees and expenses.
6.7 Delegations of authority.

### Subpart B—Information Required From Applicants

6.8 Contents of application.
6.9 Net worth exhibit.
6.10 Documentation of fees and expenses.
6.11 When an application may be filed.

### Subpart C—Procedures for Considering Applications

6.12 Filing and service of documents.
6.13 Answer to application.
6.14 Decision.
6.15 Agency review.
6.16 Judicial review.
6.17 Payment of award.

AUTHORITY: Sec. 203(a)(1). Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 20765, May 14, 1982, unless otherwise noted.

## Subpart A—General Provisions

### § 6.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before agencies of the Government of the United States. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Treasury Department will use to make them.

### § 6.2 When the act applies.

The Act applies to any adversary adjudication pending before an agency at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final agency action occurs.

### § 6.3 Proceedings covered.

The Act applies to adversary adjudications required to be conducted by the Treasury Department under 5 U.S.C. 554. Within the Treasury Department, these proceedings are:

(a) Bureau of Alcohol, Tobacco and Firearms: (1) Permit proceedings under the Federal Alcohol Administration Act (27 U.S.C. 204); (2) Permit proceedings under the Internal Revenue Code of 1954 (26 U.S.C. 5171, 5271, 5713); (3) License and permit proceedings under the Federal Explosives Laws (18 U.S.C. 843).

(b) Comptroller of the Currency:

All proceedings conducted under 12 CFR Part 19, Subpart A.

### § 6.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and has complied with the requirements in Subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C.

1141(a)) with not more than 500 employees, or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the matter in controversy is primarily related to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual or group of individuals, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares of another business, or controls in any manner the election of a majority of that business's board of directors, trustees, or other persons exercising similar functions, will be considered an affiliate of that business for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the afffiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

### § 6.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with the *final* disposition of a proceeding, unless (1) the position of the agency was substantially justified, or (2) special circumstances make the award unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

### § 6.6 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) Reasonable cost of any study, analysis, engineering report, test, or project which the agency finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees.

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that

(1) Compensation for an expert witness will not exceed the highest rate paid by the agency for expert witnesses; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

### § 6.7 Delegations of authority.

The Director, Bureau of Alcohol, Tobacco and Firearms and the Comptroller of the Currency are authorized to take final action on matters pertaining to the Equal Access to Justice Act, 5 U.S.C. 504, in proceedings listed in § 6.3 under the respective bureau or office. The Secretary of the Treasury may by order delegate authority to take final action on matters pertaining to the Equal Access to Justice Act in particular cases to other subordinate officials.

## Subpart B—Information Required From Applicants

### § 6.8 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the agency in the proceeding that the applicant alleges was not substantially justified. The application shall state the basis for the applicant's belief that the position was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall itemize the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the agency to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

### § 6.9 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization, or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 6.4(f)) when the proceeding was initiated. In the case of national banking associations, "net worth" shall be considered to be the total capital and surplus as reported, in conformity with the applicable instructions and guidelines, on the bank's last Consolidated Report of Condition filed before the initiation of the underlying proceeding.

(b) The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

### § 6.10 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If not hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

### § 6.11 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding but in no case later than 30 days after the agency's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an appplicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

## Subpart C—Procedures for Considering Applications

### § 6.12 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

### § 6.13 Answer to application.

(a) Within 30 days after service of an application, counsel representing the agency against which an award is sought shall file an answer to the application.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 60 days and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer supporting affidavits.

### § 6.14 Decision.

The adjudicative officer shall issue an initial decision on the application within 60 days after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

### § 6.15 Agency review.

Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the agency may decide to review the decision on its own initiative. If neither the applicant nor agency counsel seeks a review and the agncy does not take review on its own initiative, the initial decision on the application shall become a final decision of the agency 30 days after it is issued. Whether to review a decision is a matter within the discretion of the agency. If review is taken, the agency will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

### § 6.16 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

### § 6.17 Payment of award.

An applicant seeking payment of an award shall submit to the agency a copy of the agency's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. An applicant shall be paid the amount awarded unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

## PART 7—EMPLOYEE INVENTIONS

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7.1 Purpose.
7.2 Responsibilities of the Department.
7.3 Responsibilities of heads of offices.
7.4 Responsibilities of the General Counsel.
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Authority: 80 Stat. 379; 5 U.S.C. 301, sec. 6, E.O. 10096; 3 CFR, 1949-1953 Comp., p. 292, as amended by E.O. 10930; 3 CFR, 1959-1963 Comp., p. 456.

Source: 33 FR 10088, July 13, 1968, unless otherwise noted.

### § 7.1 Purpose.

Provisions defining the right, title, and interest of the Government in and to an invention made by a Government employee under various circumstances and the duties of Government agencies with respect thereto are set forth in Executive Order No. 10096, 15 FR 389, as amended (35 U.S.C. 266 note). Further definition of the circumstances under which the Government will acquire the right to a patent in such an invention or a nonexclusive, irrevocable, royalty-free license in the invention, and the procedures for the determination of these interests, are set forth in the regulations issued under that Executive order by the Patent Office, 37 CFR Part 100. The purpose of this Part 7 is to implement for the Treasury Department the foregoing Executive order and regulations of the Patent Office by (a) bringing to the attention of Treasury employees the law and procedure governing their rights to, and interest in, inventions made by them, (b) defining responsibility within the Department for making the necessary determinations, and, (c) establishing internal procedures for action in conformity with the Executive order and the Patent Office regulations.

### § 7.2 Responsibilities of the Department.

The responsibilities of the Treasury Department are to determine initially (a) the occurrence of an invention by an employee, (b) his rights in the invention and the rights of the Government therein, and (c) whether patent protection will be sought in the United States by the Department, and to furnish the required reports to the Patent Office.

### § 7.3 Responsibilities of heads of offices.

(a) Heads of bureaus or offices in the Department shall be responsible for determining initially whether the results of research, development, or other activity of an employee within that bureau or office constitute an invention which falls within the purview of Executive Order 10096, as amended, and is to be handled in accordance with the regulations in this part.

(b) Heads of bureaus or offices are responsible for obtaining from the employee the necessary information and, if the determination under paragraph (a) of this section is affirmative, preparing on behalf of the bureau or office a description of the invention and its relationship to the employee's duties and work assignments.

(c) Heads of bureaus or offices, after such examination and investigation as may be necessary, shall refer to the General Counsel all information obtained concerning the invention and such determination as the head of the bureau or office has made with respect to the character of the activity as an invention. These reports shall include any determination as to the giving of a cash award to the employee for his performance relating to that invention.

### § 7.4 Responsibilities of the General Counsel.

(a) The General Counsel shall be responsible for determining, subject to review by the Commissioner of Patents, the respective rights of the Government and of the inventor in and to any invention made by an employee of the Department.

(b) On the basis of the foregoing determination, the General Counsel shall determine whether patent protection will be sought by the Department for such an invention.

(c) The General Counsel will prepare and furnish to the Patent Office the reports required by the regulations of that Office and will serve as the liaison officer between the Department and the Commissioner of Patents.

**§ 7.5 Responsibilities of employees.**

All employees are required to report to the heads of their bureaus or offices any result of research, development, or other activity on their part which may constitute an invention and the circumstances under which this possible invention came into being.

**§ 7.6 Effect of awards.**

The acceptance by an employee of a cash award for performance which constitutes an invention shall, in accordance with 5 U.S.C. 4502(c), constitute an agreement that the use by the Government of the idea, method, or device for which the award is made does not form the basis of any further claim against the Government by the employee, his heirs or assigns.

**§ 7.7 Appeals.**

(a) Any employee who is aggrieved by a determination made by the head of his bureau or office under this part may obtain a review of the determination by filing an appeal with the General Counsel within 30 days after receiving the notice of the determination complained of.

(b) Any employee who is aggrieved by a determination made by the General Counsel under this part may obtain a review of the determination by filing a written appeal with the Commissioner of Patents within 30 days after receiving notice of the determination complained of, or within such longer period as the Commissioner may provide. The appeal to the Commissioner shall be processed in accordance with the provisions in the regulations of the Patent Office for an appeal from an agency determination.

**§ 7.8 Delegation.**

The heads of bureaus or offices and the General Counsel may delegate, as appropriate, the performance of the responsibilities assigned to them under this part.

# PART 8—PRACTICE BEFORE THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

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AUTHORITY: Sec. 3, 23 Stat. 258 (31 U.S.C. 1026); 5 U.S.C. 301, 500, 551-559; and reorganization Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, as amended; unless otherwise noted.

SOURCE: 42 FR 33026, June 29, 1977, unless otherwise noted.

## Supart A—General Requirements

### § 8.1 Scope.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled practitioners, and other persons representing clients before the Bureau of Alcohol, Tobacco and Firearms.

### § 8.2 Persons who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Bureau of Alcohol, Tobacco and Firearms, may practice before the Bureau upon filing a written declaration with the Bureau, that he or she is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he or she acts.

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment before the Bureau of Alcohol, Tobacco and Firearms, may practice before the Bureau upon filing a written declaration with the Bureau, that he or she is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he or she acts.

(c) *Enrollment practitioners.* Any person enrolled as a practitioner under the provisions of Subpart C of this part and who is not under suspension or disbarment from enrollment may practice before the Bureau.

(d) *Limited practitioners.* Any person qualified for limited practice without enrollment under the provisions of § 8.29 may practice before the Bureau.

(e) *Restrictions on Government officers and employees.* Any officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, who is otherwise eligible to practice under the provisions of this part, may represent parties before the Bureau when doing so in the conduct of his or her official duties. A Government officer or employee may not otherwise practice before the Bureau except that, subject to the requirements of 18 U.S.C. 205, he or she may represent a member of his or her immediate family or a person or estate for which he or she serves as guardian, executor, administrator, trustee or other personal fiduciary. Member of Congress or Resident Commissioners (elect or serving) may not practice before the Bureau in connection with any matter for which they directly or indirectly seek any compensation.

(f) *Restrictions on State officers and employees.* No officer or employee of any State, or subdivision thereof, whose official responsibilities require him or her to pass upon, investigate, or deal with any State law or regulation concerning alcohol, tobacco, firearms, explosives matters or wagering, may practice before the Bureau if his or her official responsibility may disclose pertinent facts or information relating to matters administered by the Bureau.

(g) *Customhouse brokers.* Customhouse brokers, licensed by the Commissioner of Customs according to 19 CFR Part 111, may represent a party for whom they have acted as a customhouse broker before the Bureau with respect to matters relating to the importation or exportation of merchandise under customs or intenal revenue laws.

(18 U.S.C. 203, 205)

### § 8.3 Conference and practice requirements.

Conference and practice requirements of the Bureau of Alcohol, Tobacco and Firearms, including requirements for powers of attorney are set forth in—

(a) 26 CFR Part 601, Subpart E (or those regulations as recodified in 27 CFR Part 71 subsequent to the effective date of these regulations, 31 CFR Part 8) with respect to all representations before the Bureau except those concerning license or permit proceedings;

(b) 27 CFR Part 200 with respect to proceedings concerning permits issued under the Federal Alcohol Administration Act or the Internal Revenue Code;

(c) 27 CFR 47.44 with respect to proceedings concerning licenses issued under the Arms Export Control Act (22 U.S.C. 2778);

(d) 27 CFR Part 178, Subpart E, with respect to proceedings concerning licenses issued under the Gun Control Act of 1968 (18 U.S.C. Chapter 44); and

(e) 27 CFR Part 181, Subpart E, with respect to proceedings concerning licenses or permits issued under the Organized Crime Control Act of 1970 (18 U.S.C. Chapter 40).

### § 8.4 Director of Practice.

(a) *Appointment.* The Secretary shall appoint the Director of Practice. In the event of the absence of the Director of Practice or a vacancy in that office, the Secretary shall designate an officer or employee of the Treasury Department to act as Director of practice.

(b) *Duties.* The Director of Practice, Office of the Secretary of the Treasury, shall: Act upon appeals from decisions of the Director denying applications for enrollment to practice before the Bureau; institute and provide for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, and enrolled practitioners; make inquiries with respect to matters under his or her jurisdiction; and perform other duties as are necessary or appropriate to carry out his or her functions under this part or as are prescribed by the Secretary.

### § 8.5 Records.

(a) *Availability.* Registers of all persons admitted to practice before the Bureau, and of all persons disbarred or suspended from practice, which are required to be maintained by the director under the provisions of § 8.27, will be available for public inspection at the Office of the Director. Other records may be disclosed upon specific request in accordance with the disclosure regulations of the Bureau (27 CFR Part 71) and the Office of the Secretary.

(b) *Disciplinary proceedings.* The Director, may grant a request by an attorney, certified public accountant, or enrolled practitioner to make public a hearing in a disciplinary proceeding, conducted under the provisions of Subpart E of this part concerning the attorney, certified public accountant or enrolled practioner, and to make the record of the proceeding available for public inspection by interested persons, if an agreement is reached by stipulation in advance to prevent disclosure of any information which is confidential, in accordance with applicable laws and regulations.

### § 8.6 Special orders.

The secretary reserves the power to issue special orders as he or she may deem proper in any cases within the scope of this part.

## Subpart B—Definitions

### § 8.11 Meaning of terms.

As used in this part, terms shall have the meaning given in this section. Words in the plural shall include the singular, and vice versa. The terms "include" and "including" do not exclude things not enumerated which are in the same general class.

*Administrative Law Judge.* The person appointed pursuant to 5 U.S.C. 3105, designated to preside over any administrative proceedings under this part.

*Attorney.* A person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

*Bureau.* The Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C. 20226.

*Certified public accountant.* Any person who is qualified to practice as a certified public accountant in any

State, possession, territory, Commonwealth, or the District of Columbia.

*CFR.* The Code of Federal Regulations.

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

*Enrolled practitioner.* Any person enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms pursuant to Subpart C of this part.

*Practice before the Bureau.* This comprehends all matters connected with presentation to the Bureau or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Bureau. Presentations include the preparation and filing of necessary documents, correspondence with and communications to the Bureau, and the representation of a client at conferences, hearings, and meetings. Preparation of a tax return, appearance of an individual as a witness for any party, or furnishing information at the request of the Bureau of any of its officers or employees is not considered practice before the Bureau.

*Secretary.* The Secretary of the Treasury.

*U.S.C.* The United States Code.

## Subpart C—Enrollment Procedures

### § 8.21 Eligibility for enrollment.

(a) *General qualifications.* The Director may grant enrollment to practice to any person who has not engaged in conduct which would justify the disbarment or suspension of any attorney, certified public accountant, or enrolled practioner. Each person shall demonstrate to the satisfaction of the Director that he or she possesses the necessary technical qualifications to enable him or her to render valuable service before the Bureau, and that he or she is otherwise competent to advise and assists in the presentation of matters before the Bureau.

(b) *Technical qualifications.* The Director may grant enrollment to practice only to persons possessing technical knowledge of the laws and regulations administered by the Bureau.

(1) Minimum criteria required of an enrolled practioner will consist of: 5 years employment with the Treasury Department in a responsible position which would familiarize the person with applicable laws and regualtions; or 5 years employment in a regulated industry in a responsible position which would familiarize the person with applicable laws and regulations; or possession of a law degree; or other significant experience such as the prior respresentation of persons before the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms.

(2) An enrolled paractioner may demonstrate technical knowledge in one or more of the several areas of laws and regulations administered by the Bureau (alcohol, tobacco firearms, or explosives matters).

(c) *Natural persons.* Enrollment to practice may only be granted to natural persons who have become 18 years of age.

(d) *Attorneys, certified public accountants.* Enrollment if not available to persons who are attorneys or certified public accountants who qualify to practice without enrollment under § 8.2 (a) or (b).

[42 FR 33026, June 29, 1977; 42 FR 36455, July 15, 1977]

### § 8.22 Application for enrollment.

(a) *Information to be furnished.* An applicant for enrollment to practice shall state his or her name, address, and business address, citizenship, and age on the application. The applicant shall also state if he or she has ever been suspended or disbarred as an attorney or certified public accountant, or if the applicant's right to practice has ever been revoked by any court, commission, or administrative agency in any jurisdiction. The applicant shall set forth his or her technical qualifications as required by § 8.21(b) which enable him or her to render valuable service before the Bureau. The applicant shall indicate which area or areas of Bureau matters in which he or she desires to practice (alcohol, tobacco, firearms, or explosives matters).

(b) *Fee.* Each application for enrollment will be accompanied by a check or money order in the amount of $25, payable to the Bureau of Alcohol, Tobacco and Firearms. This fee will be retained by the United States whether or not the applicant is granted enrollment. Agents who are enrolled to practice before the Internal Revenue Service prior to September 27, 1977, need not include this fee and should indicate their enrollment number on the application.

(c) *Execution under oath.* All applications for enrollment will be executed under oath or affirmation.

(d) *Filing.* Applications for enrollment will be filed with the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pensylvania Avenue NW., Washington, D.C. 20226.

(e) *Additional information.* The Director, as a condition to consideration for enrollment, may require the applicant to file additional information as necessary to determine if the applicant is qualified. The Director shall, upon written request, afford an applicant the opportunity to be heard with respect to his or her application for enrollment.

(Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a))

[42 FR 33026, June 29, 1977; 42 FR 36455, July 15, 1977]

### § 8.23 Denial of enrollment; appeal.

(a) The Director, in denying an application for enrollment, shall inform the applicant as to the reasons. The applicant may, within 30 days after receipt of the notice of denial, file a written appeal together with reasons in support thereof, with the Director of Practice. The Director of Practice shall render a decision on the appeal as soon as practicable.

(b) An applicant may, within 30 days after receipt of the decision of the Director of Practice in sustaining a denial of enrollment, appeal the decision to the Secretary.

### § 8.24 Enrollment cards.

The Director shall issue an enrollment card to each practitioner who is enrolled to practice before the Bureau. Each enrollment card is valid for a period of 5 years as long as the holder remains enrolled and in good standing before the Bureau. Unless advised to the contrary by the Director, any officer or employee of the Bureau may consider the holder of an unexpired enrollment card to be authorized to practice before the Bureau in the subject area or areas indicated upon the card (alcohol, tobacco, firearms, or explosives matters).

### § 8.25 Renewal of enrollment card.

(a) *Period of renewal.* An enrolled practitioner may apply for renewal of his or her enrollment card during a 12-month period prior to the expiration of the enrollment card.

(b) *Application.* Each enrolled practitioner applying for a renewal of enrollment shall apply to the Director. The enrolled practitioner shall include in the application all information required by § 8.22 except information relating to technical qualifications unless the enrolled practitioner is applying for enrollment in a subject area or areas in which he or she was not previously qualified to practice.

(c) *Fee.* Each application for renewal of enrollment will be accompanied by a check or money order in the amount of $5, payable to the Bureau of Alcohol, Tobacco and Firearms.

### § 8.26 Change in enrollment.

(a) *Change in area of practice.* At any time during a period of enrollment, an enrolled practitioner may apply to practice in a subject area or areas in which he or she was not previously qualified to practice (alcohol, tobacco, firearms, or explosives matters).

(b) *Application.* Each enrolled practitioner applying for a change in enrollment shall apply to the Director. The enrolled practitioner shall include in the application all information required by § 8.22 but shall include information relating to technical qualifications only in those additional subject areas in which he or she is applying to practice.

(c) *Fee.* Each application for change in enrollment will be accompanied by a check or money order in the amount of $5, payable to the Bureau of Alcohol, Tobacco and Firearms.

### § 8.27 Enrollment registers.

The Director shall maintain, for public inspection, a register of all persons enrolled to practice before the Bureau and the subject areas in which each person is enrolled to practice, a register of all persons disbarred or suspended from practice, and a register of all persons whose applications for enrollment before the Bureau have been denied.

### § 8.28 Termination of enrollment.

(a) *Attorneys, certified public accountants.* The enrollment of a practitioner to whom an enrollment card has been issued will terminate when that person becomes eligible to practice without enrollment under § 8.2 (a) or (b), and that person shall surrender his or her enrollment card to the Director for cancellation.

(b) *Expiration of enrollment.* The enrollment of any person will automatically terminate after the date indicated on the enrollment card unless, during the 12-month period prior to the expiration date, that person applies for renewal of enrollment with the Director as provided in § 8.25. In this case, the person may continue to practice before the Bureau until his or her application has been finally determined.

### § 8.29 Limited practice without enrollment.

(a) *General.* Individuals may appear on their own behalf and may otherwise appear without enrollment, providing they present satisfactory identification, in the following classes of cases:

(1) An individual may represent another individual who is his or her regular full-time employer, may represent a partnership of which he or she is a member or a regular full-time employee, of may represent without compensation a member of his or her immediate family.

(2) Corporations (including parent corporations, subsidiaries or affiliated corporations), trusts, estates, associations, or organized groups may be represented by bona fide officers or regular full-time employees.

(3) Trusts, receiverships, guardianships, or estates may be represented by their trustees, receivers, guardians, administrators, executors, or their regular full-time employees.

(4) Any government unit, agency, or authority may be represented by an officer or regular employee in the course of his or her official duties.

(5) Unenrolled persons may participate in rulemaking as provided in 5 U.S.C. 553.

(b) *Special appearances.* The Director, subject to conditions he or she deems appropriate, may authorize any person to represent a party without enrollment, for the purpose of a particular matter.

## Subpart D—Duties and Restrictions Relating to Practice

### § 8.31 Furnishing of information.

(a) *To the Bureau.* No attorney, certified public accountant, or enrolled practitioner may neglect or refuse promptly to submit records or information in any matter before the Bureau, upon proper and lawful request by an authorized officer or employee of the Bureau, or may interfere, or attempt to interfere, with any proper and lawful effort by the Bureau or its officers or employees, to obtain the requested record or information, unless he or she believes in good faith and on reasonable grounds that the record or information is privileged or that the request for, or effort to obtain, that record or information is of doubtful legality.

(b) *To the Director of Practice.* It is the duty of an attorney or certified public accountant, who practices before the Bureau, or enrolled practitioner when requested by the Director of Practice, to provide the Director of Practice with any information he or she may have concerning violation of the regulations in this part by any person, and to testify thereto in any proceeding instituted under this part for the disbarment or suspension of an attorney, certified public accountant, or enrolled practitioner, unless he or she believes in good faith and on reasonable grounds that that information is privileged or that the request is of doubtful legality.

### § 8.32 Prompt disposition of pending matters.

No attorney, certified public accountant, or enrolled practitioner may unreasonably delay the prompt disposition of any matter before the Bureau.

### § 8.33 Accuracy.

Each attorney, certified public accountant, and enrolled practitioner shall exercise due diligence in—

(a) Preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Bureau matters;

(b) Determining the correctness of any representations made by him or her to the Bureau; and

(c) Determining the correctness of any information which he or she imparts to a client with reference to any matter administered by the Bureau.

### § 8.34 Knowledge of client's omission.

Each attorney, certified public accountant, or enrolled practitioner who knows that a client has not complied with applicable law, or has made an error in or omission from any document, affidavit, or other paper which the law requires the client to execute, shall advise the client promptly of the fact of such noncompliance, error, or omission.

### § 8.35 Assistance from disbarred or suspended persons and former Treasury employees.

No attorney, certified public accountant or enrolled practitioner shall, in practice before the Bureau, knowingly and directly or indirectly:

(a) Employ or accept assistance from any person who is under disbarment or suspension from practice before any agency of the Treasury Department;

(b) Accept employment as associate, correspondent, or subagent from, or share fees with, any such person;

(c) Accept assistance in a specific matter from any person who participated personally and substantially in the matter as an employee of the Treasury Department.

[44 FR 47059, Aug. 10, 1979]

### § 8.36 Practice by partners of Government employees.

No partner of an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, may represent anyone in any matter administered by the Bureau in which the Government employee participates or has participated personally and substantially as a Government employee, or which is the subject of that employee's official responsibility.

### § 8.37 Practice by former Government employees.

(a) *Violation of law.* No former officer or employee of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, may represent anyone in any matter administered by the Bureau if the representation would violate any of the laws of the United States.

(b) *Personal and substantial participation.* No former officer or employee of the executive branch of the U.S. Goverment, of any independent agency of the United States, or of the District of Columbia, may represent anyone with repect to any matter under the administration of the Bureau, if he or she participated personally and substantially in that matter a a Government employee.

(c) *Official responsibility.* No former officer or employee of the executive branch of the U.S. Government, of any indepenednt agency of the United States, or of the District of Columbia, may within one year after his or her employment has ceased, appear personally as a practitioner before the Bureau with respect to any matter administered by the Bureau if that representation involves a specific matter under the former employee's official responsibility as a Government employee, within a one-year period prior to the termination of that responsibility.

(d) *Aid or assistance.* No former officer or employee of the Bureau, who is eligible to practice before the Bureau, may aid or assist any person in the representation of a specific matter in which the former officer or employee participated personally and substantially as an officer or employee of the Bureau.

(18 U.S.C. 207)

### § 8.38 Notaries.

No attorney, certified public accountant, or enrolled practitioner may, with respect to any matter administered by the Bureau, take acknowledgements, administer oaths, certify papers, or perform any official act in connection with matters in which he or she is employed as counsel, attorney, or practioner, or in which he or she may be in any way interested before the Bureau.

(26 Op. Atty. Gen. 236)

### § 8.39 Fees

No attorney, certified public accountant, or enrolled practitioner may charge an unconscionable fee for representing a client in any matter before the Bureau.

### § 8.40 Conflicting interests.

No attorney, certified public accountant, or enrolled practitioner may represent conflicting interests in practice before the Bureau, except by express consent of all directly interested parties after full disclosure has been made.

### § 8.41 Solicitation.

(a) *Advertising and solicitation restrictions.* (1) No attorney, certified public accountant or enrolled practitioner shall, with respect to any Bureau matter, in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive or unfair statement or claim. For the purposes of this subsection, the prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by State or Federal agencies having jurisdiction over the practitioner, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter.

(2) No attorney, certified public accountant or enrolled practitioner shall make, directly or indirectly, an uninvited solicitation of employment, in matters related to the Bureau. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to: (i) Seeking new business from an existing or former client in a related matter; (ii) solicitation by mailings, the contents of which are designed for the general public; or (iii) non-coercive in-person solicitation by those eligible to practice before the Bureau while acting as an employee, member, or officer of an exempt organization listed in sections 501(c) (3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

(b) *Permissible Advertising.* (1) Attorneys, certified public accountants and enrolled practitioners may publish, broadcast, or use in a dignified manner through any means of communication set forth in paragraph (d) of this section:

(i) The name, address, telephone number, and office hours of the practitioner or firm.

(ii) The names of individuals associated with the firm.

(iii) A factual description of the services offered.

(iv) Acceptable credit cards and other credit arrangements.

(v) Foreign language ability.

(vi) Membership in pertinent, professional organizations.

(vii) Pertinent professional licenses.

(viii) A statement that an individual's or firm's practice is limited to certain areas.

(ix) In the case of an enrolled practitioner, the phrase "enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms."

(x) Other facts relevant to the selection of a practitioner in matters related to the Bureau which are not prohibited by these regulations.

(2) Attorneys, certified public accountants and enrolled practitioners may use, to the extent they are consistent with the regulations in this sec-

tion, customary biographical insertions in approved law lists and reputable professional journals and directories, as well as professional cards, letterheads and announcements: *Provided*, That (i) attorneys do not violate applicable standards of ethical conduct adopted by the American Bar Association, (ii) certified public accountants do not violate applicable standards of ethical conduct adopted by the American Institute of Certified Public Accountants, and (iii) enrolled practitioners do not violate applicable standards of ethical conduct adopted by the National Society of Public Accountants.

(c) *Fee Information.* (1) Attorneys, certified public accountants and enrolled practitioners may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

(2) Attorneys, certified public accountants and enrolled practitioners may also publish the availability of a written schedule of fees.

(3) Attorneys, certified public accountants and enrolled practitioners shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(d) *Communications.* Communications, including fee information, shall be limited to professional lists, telephone directories, print media, permissible mailings as provided in these regulations, radio and television. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission.

(e) *Improper Associations.* An attorney, certified public accountant or enrolled practitioner may, in matters related to the Bureau, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided*, That an attorney, certified public accountant or enrolled practitioner does not, directly or indirectly, act or hold himself out as authorized to practice before the Bureau in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled practitioner from practice before the Bureau in a capacity other than that described above.

[44 FR 47060, Aug. 10, 1979]

### § 8.42 Practice of law.

Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.

## Subpart E—Disciplinary Proceedings

### § 8.51 Authority to disbar or suspend.

The Secretary, after due notice and opportunity for hearing, may suspend or disbar from practice before the Bureau any attorney, certified public accountant, or enrolled practitioner shown to be incompetent, disreputable or who refuses to comply with the rules and regulations in this part or who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any client or prospective client, by word, circular, letter, or by advertisement.

(Sec. 3, 23 Stat. 258 (31 U.S.C.1026).)

### § 8.52 Disreputable conduct.

Disreputable conduct for which an attorney, certified public accountant, or enrolled practitioner may be disbarred or suspended from practice before the Bureau includes, but is not limited to—

(a) Conviction of any criminal offense under the revenue laws of the United States; under any other law of the United States which the Bureau enforces pursuant to Treasury Department Order No. 221 (37 FR 11696) effective July 1, 1972; or for any offense involving dishonesty or breach of trust.

(b) Giving false or misleading information, or participating in any way in the giving of false or misleading information, to the Bureau or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the Bureau in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term "information".

(c) Solicitation of employment as prohibited under § 8.41, the use of false or misleading representations with intent to deceive a client or a prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Bureau or an officer or employee thereof.

(d) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof; knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof, or concealing assets of himself or herself, or of another in order to evade Federal taxes or payment thereof.

(e) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(f) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Bureau by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(g) Disbarment or suspension from practice as an attorney or certified public accountant by any duly constituted authority of any State, possession, Commonwealth, the District of Columbia, or by any Federal court of record.

(h) Disbarment or suspension from practice as an attorney, certified public accountant, or other person admitted to practice before the Internal Revenue Service.

(i) Knowingly aiding and abetting another person to practice before the Bureau during a period of suspension, disbarment, or ineligibility of the other person. Maintaining a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practice before the Bureau or the Intenal Revenue Service is presumed to be a violation of this provision.

(j) Contemptuous conduct in connection with practice before the Bureau, including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

(k) Willful violatin of any of the regulations contained in this part.

[42 FR 33026, June 29, 1977; 42 FR 36455, July 15, 1977]

### § 8.53 Initiation of disciplinary proceedings.

(a) *Receipt of information.* If an officer or employee of the Bureau has reason to believe that an attorney, certified public accountant, or enrolled practitioner has violated any of the provisions of this part or engaged in any disreputable conduct as defined in § 8.52, the employee shall promptly make a report thereof which will be forwarded to the Director of Practice. Any other person possessing information concerning violations or disreputable conduct may make a report thereof to the Director of Practice or to any officer or employee of the Bureau.

(b) *Institution of proceeding.* When the Director of Practice has reason to believe that any attorney, certified public accountant, or enrolled practitioner has violated any provisions of the laws or regulations governing practice before the Bureau, he or she may reprimand the person or institute a proceeding for the disbarment or suspension of that person. The proceeding will be instituted by a complaint which names the respondent and is signed by the Director of Practice and filed in his or her office. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest does not permit, the Director of Practice may not institute a proceeding until he or she has called to the attention of the proposed respondent, in writing, facts or conduct which warrant institution of a proceeding, and has accorded the proposed respondent the opportuity to demonstrate or achieve compliance with all lawful requirements.

### § 8.54 Conferences.

(a) *General.* The Director of Practice may confer with an attorney, certified public accountant, or enrolled practioner concerning allegations of misconduct whether or not a proceeding for disbarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which that person is the respondent, the stipulaton may be entered in the record at the instance of either party to the proceeding.

(b) *Resignation or voluntary suspension.* An attorney, certified public accountant, or enrolled practitioner, in order to avoid the institution or conclusion of a disbarment or suspension proceeding, may offer his or her consent to suspension from practice before the Bureau. An enrolled practitioner may also offer a resignation. The Director of Practice, at his or her discretion, may accept the offered resignation of an enrolled practitioner and may suspend an attorney, certified public accountant, or enrolled practitioner in accordance with the consent offered.

### § 8.55 Contents of complaint.

(a) *Charges.* A complaint will give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint will be deemed sufficient if it fairly informs the respondent of the charges to that he or she is able to prepare a defense.

(b) *Demand for answer.* The complaint will give notification of the place and time prescribed for the filing of an answer by the respondent; that time will be not less than 15 days from the date of service of the complaint. Notice will be given that a decision by default may be rendered against the respondent if the complaint is not answered as required.

### § 8.56 Service of complaint and other papers.

(a) *Complaint.* A copy of the complaint may be served upon the respondent by certified mail or by first-class mail. The copy of the complaint may be delivered to the respondent or the respondent's attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent, or the complaint may be delivered in any manner which has been agreed to by the respondent. If the service is by certified mail, the post office receipt signed by or on behalf of the respondent will be proof of service. If the certified matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him or her by first-class mail, addressed to the respondent at the address under which he or she is enrolled or at the last address known to the Director of Practice. If service is made upon the respondent or the respondent's attorney or agent in person, or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, will be proof of service.

(b) *Service of other papers.* Any paper other than the complaint may be served upon an attorney, certified public accountant, or enrolled practitioner as provided in paragraph (a) of this section, or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. This mailing will constitute complete service. Notices may be served upon the respondent or his attorney or agent by telegram.

(c) *Filing of papers.* When the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the papers will be filed with the Director of Practice, Treasury Department, Washington, D.C. 20220. All papers will be filed in duplicate.

### § 8.57 Answer.

(a) *Filing.* The respondent shall file the answer in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The respondent shall file the answer in duplicate with the director of Practice.

(b) *Contents.* The respondent shall include in the answer a statement of facts which constitute the grounds of defense, and shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he or she knows to be true, or state that he or she is without sufficient information to form a belief when in fact the respondent possesses that information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer is deemed to be admitted and may be considered as proven, and no further evidence in respect of that allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law Judge, will constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make a decision by default without a hearing or further procedure.

(d) *Reply by Director of Practice.* No reply to the respondent's answer is required, and new matter in the answer will be deemed to be denied, but the Director of Practice may file a reply at his or her discretion or at the request of the Administrative Law Judge.

### § 8.58 Supplemental charges.

If it appears that the respondent in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he or she in fact possesses that information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her disbarment or suspension, the Director of Practice may file supplemental charges against the respondent. These supplemental charges may be tried with other charges in the case, provided the respondent is given due notice and is afforded an opportunity to prepare to a defense to them.

### § 8.59 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence. The party who would otherwise be prejudiced by the amendment will be given reasonable opportunty to meet the allegation of the pleading as amended, and the Administrative Law Judge shall make findings on an issue presented by the pleadings as so amended.

### § 8.60 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

### § 8.61 Representation.

A respondent or proposed respondent may appear in person or be represented by counsel or other representative who need not be enrolled to practice before the Bureau. The Director of Practice may be represented by an Attorney or other employee of the Treasury Department.

### § 8.62 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge, appointed as provided by 5

U.S.C. 3105, shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled practitioners.

(b) *Responsibilities.* The Administrative Law Judge in connection with any disbarment or suspension proceeding shall have authority to—

(1) Administer oaths and affirmation;

(2) Make rulings upon motions and requests; these rulings may not be appealed prior to the close of the hearing except at the discretion of the Administrative Law Judge in extraordinary circumstances;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Take or authorize to the taking of depositions;

(5) Determine the time and place of hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues by consent of the parties;

(7) Receive and consider oral or written arguments on facts or law;

(8) Make initial decisions;

(9) Adopt rules of procedure and modify them from time to time as occasion requires for the orderly disposition of proceedings; and

(10) Perform acts and take measures as necessary to promote the efficient conduct of any proceeding.

### § 8.63 Hearings.

(a) *Conduct.* The Administrative Law Judge shall preside at the hearing on a complaint for the disbarment or suspension of an attorney, certified public accountant, or enrolled practitioner. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be received under oath or affirmation. The Administrative Law Judge shall conduct hearings pursuant to 5 U.S.C. 556.

(b) *Failure to appear.* If either party to the proceedings fails to appear at the hearing, after due notice has been sent, the Administrative Law Judge may deem them to have waived the right to a hearing and may make a decision against the absent party by default.

### § 8.64 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 8.65 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Bureau of Alcohol, Tobacco and Firearms and the Office of the Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. These documents, records and papers may be evidenced by a copy attested or identified by an officer or employee of the Bureau or the Treasury Department.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions he or she deems proper.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection and the record may not include arguments thereon, except as ordered by the Administrative Law Judge. Rulings on objections will be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

### § 8.65 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge, be taken by either the Director of Practice or the respondent or their authorized representatives. Depositions may be taken upon oral or written questioning, upon not less than 10 days' written notice to the other party before any officer authorized to administer an oath for general purposes or before an officer or employee of the Bureau authorized to administer an oath pursuant to 27 CFR 70.35. The written notice will state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written questioning, any cross-examination will be upon written questioning. Copies of the written questioning will be served upon the other party with the notice, and copies of any written cross-interrogation will be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reproduction of depositions will be borne by the party at whose instance the deposition is taken.

### § 8.66 Transcript.

In cases in which the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. If the hearing is stenographically reported by a regular employee of the Bureau, a copy of the hearing will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee.

(Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a))

### § 8.67 Proposed findings and conclusions.

Except in cases when the respondent has failed to answer the complaint or when a party has failed to appear at the hearing, the Administrative Law Judge, prior to making his or her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons.

### § 8.68 Decision of Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision will include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director of Practice and shall transmit a copy to the respondent or the respondent's attorney of record. In the absence of an appeal to the Secretary, or review of the decision upon motion of the Secretary, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the Secretary of the Treasury 30 days from the date of the Administrative Law Judge's decision.

### § 8.69 Appeal to the Secretary.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary. The appeal will be filed with the Director of Practice in duplicate and will include exceptions to the decision of the Administrative Law Judge and supporting reasons for those exceptions. If the Director of Practice files the appeal, he or she shall transmit a copy of it to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the Director of Practice files the reply brief, he or she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary.

### § 8.70 Decision of the Secretary.

On appeal from or review of the intial decision of the Administrative Law Judge, the Secretary shall make the agency decision. In making this decision, the Secretary shall review the record or those portions of the records as may be cited by the parties in order to limit the issues. The Director of

Prasctice shall transmit a copy of the Secretary's decision to the respondent.

### § 8.71 Effect of disbarment or suspension.

(a) *Disbarment.* If the final order against the respondent is for disbarment, the respondent will not thereafter be permitted to practice before the Bureau unless authorized to do so by the Director of Practice pursuant to § 8.72.

(b) *Suspension.* If the final order against the respondent is for suspension, the respondent will not thereafter be permitted to practice before the Bureau during the period of suspension.

(c) *Surrender of enrollment card.* If an enrolled practitioner is disbarred or suspended, he or she shall surrender the enrollment card to the Director of Practice for cancellation, in the case of disbarment, or for retention during the period of suspension.

(d) *Notice of disbarment or suspension.* Upon the issuance of a final order for suspension or disbarment, the Director of Practice shall give notice of the order to appropriate officers and employees of the Bureau of Alcohol, Tobacco and Firearms and to interested departments and agencies of the Federal Government. The Director of Practice may also give notice as he or she may determine to the proper authorities of the State in which the disbarred or suspended person was licensed to practice as an attorney or certified public accountant.

### § 8.72 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Bureau after the expiration of 5 years following disbarment. The director of Practice may not grant reinstatement unless he or she is satisfied that the petitioner is not likely to conduct himself or herself contrary to the regulations in this part, and that granting reinstatement would not be contrary to the public interest.

## PART 9—EFFECTS OF IMPORTED ARTICLES ON THE NATIONAL SECURITY

Sec.

9.2 Definitions.
9.3 General.
9.4 Criteria for determining effects of imports on national security.
9.5 Applications for investigation.
9.6 Confidential information.
9.7 Conduct of investigation.
9.8 Emergency action.
9.9 Report.

AUTHORITY: Sec. 232; as amended, 76 Stat. 877, 80 Stat. 369 (19 U.S.C. 1862); 5 U.S.C. 301; Reorg. Plan No. 1 of 1973; and E.O. 11725, June 27, 1973 (38 FR 17175).

SOURCE: 39 FR 10898, Mar. 22, 1974, unless otherwise noted.

### § 9.2 Definitions.

As used herein, "Secretary" means the Secretary of the Treasury and "Assistant Secretary" means the Assistant Secretary of the Treasury (Enforcement, Operations, and Tariff Affairs).

[40 FR 50717, Oct. 31, 1975]

### § 9.3 General.

(a) Upon request of the head of any Government department or agency, upon application of an interested party, or upon his own motion, the Assistant Secretary shall set in motion an immediate investigation to determine the effects on the national security of imports of any article.

(b) The Secretary shall report the findings of his investigation under paragraph (a) of this section with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this section.

[39 FR 10898, Mar. 22, 1974, as amended at 40 FR 50717, Oct. 31, 1975]

### § 9.4 Criteria for determining effects of imports on national security.

(a) In determining the effect on the national security of imports of the article which is the subject of the investigation, the Secretary is required to take into consideration the following:

(1) Domestic production needed for projected national defense requirements including restoration and rehabilitation.

(2) The capacity of domestic industries to meet such projected requirements, including existing and anticipated availabilities of:

(i) Human resources.

(ii) Products.

(iii) Raw materials.

(iv) Production equipment and facilities.

(v) Other supplies and services essential to the national defense.

(3) The requirement of growth of such industries and such supplies and services including the investment, exploration and development necessary to assure capacity to meet projected defense requirements.

(4) The effect which the quantities, availabilities, character and uses of imported goods have or will have on such industries and the capacity of the United States to meet national security requirements.

(5) The economic welfare of the Nation as it is related to our national security, including the impact of foreign competition on the economic welfare of individual domestic industries. In determining whether such impact may impair the national security, any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects shall be considered.

(b) The Secretary shall also consider other relevant factors in determining whether the national security is affected by imports of the article.

### § 9.5 Applications for investigation.

(a) Applications shall be in writing. Twenty-five copies shall be filed by mail with the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, Washington, D.C. 20220.

(b) Applications shall describe how the quantities or circumstances of imports of the particular article affect the national security and shall contain the following information:

(1) Identification of the person, partnership, association, corporation, or other entity on whose behalf the application is filed.

(2) A precise description of the article.

(3) Description of the applicant and the domestic industry concerned, including pertinent information regarding companies and their plants, locations, capacity and current output of the domestic industry concerned with the article in question.

(4) Pertinent statistics showing the quantities and values of both imports and production in the United States.

(5) Nature, sources, and degree of the competition created by imports of the article in question.

(6) The effect, if any, of imports of the article in question upon the restoration of domestic production capacity in an emergency.

(7) Employment and special skills involved in the domestic production of the article.

(8) Extent to which investment and specialized productive capacity is or will be adversely affected.

(9) Revenues of Federal, State, or local Governments which are or may be affected by the volume or circumstances of imports of the article.

(10) Defense or defense supporting uses of the article including data on defense contracts or sub-contracts, both past and current.

(c) Statistical material presented should be on a calendar-year basis for sufficient periods of time to indicate trends and afford the greatest possible assistance to the Assistant Secretary. Monthly or quarterly data for the latest complete years should be included as well as any other breakdowns which may be pertinent to show seasonal or short-term factors.

[39 FR 10898, Mar. 22, 1974, as amended at 40 FR 50717, Oct. 31, 1975]

### § 9.6 Confidential information.

Information submitted in confidence which the Assistant Secretary determines would disclose trade secrets and commercial or financial information obtained from a person and privileged, within the meaning of 5 U.S.C. 552 and 31 CFR Part 1, will be accorded confidential treatment. All information submitted in confidence must be on separate pages marked "Business Confidential."

[40 FR 50717, Oct. 31, 1975]

### § 9.7 Conduct of investigation.

(a) The investigation by the Assistant Secretary or by such official or agency as he may designate, shall be such as to enable the Secretary to arrive at a fully informed opinion as to the effect on the national security of imports of the article in question.

(b) If the Assistant Secretary determines that it is appropriate to hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to an investigation, he shall issue a public notice which shall be published in the FEDERAL REGISTER. Such notice shall include a statement of the time, place and nature of any public hearing or shall solicit from any interested party written comments, opinions, or data relative to the investigation, to be submitted to the Assistant Secretary within the time period specified in the notice. Rebuttal to material so submitted may be filed with the Assistant Secretary within such time as is specified in the public notice. All data, comments and opinions shall be submitted with 25 copies.

(c) All applications filed and all comments, opinions, and data submitted pursuant to paragraph (b) of this section, except information determined to be confidential as provided in § 9.6, will be available for inspection and copying at the Office of the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, in Washington, D.C. The Assistant Secretary will maintain a roster of persons who have submitted materials.

(d) The Assistant Secretary or his designee may also request further data from other sources through the use of questionnaires, correspondence, or other means.

(e) The Assistant Secretary or his delegate shall, in the course of the investigation, seek information or advice from, and consult with, the Secretary of Defense, the Secretary of Commerce, or their delegates, and any other appropriate officer of the United States as the Assistant Secretary shall determine.

(f) In addition, the Assistant Secretary, or his designee, may, when he deems it appropriate, hold public hearings to elicit further information. If a hearing is held:

(1) The time and place thereof will be published in the FEDERAL REGISTER.

(2) It will be conducted by the Assistant Secretary or his designee, and the full record will be considered by the Secretary in arriving at his determination.

(3) Interested parties may appear, either in person or by representation, and produce oral or written evidence relevant and material to the subject matter of the investigation.

(4) After a witness has testified the Assistant Secretary or his designee may question the witness. Questions submitted to the Assistant Secretary or his designee in writing by any interested party may, at the discretion of the Assistant Secretary or his designee, be posed to the witness for reply for the purpose of assisting the Assistant Secretary in obtaining the material facts with respect to the subject matter of the investigation.

(5) The hearing will be stenographically reported. The Assistant Secretary will not cause transcripts of the record of the hearing to be distributed to the interested parties, but a transcript may be inspected at the Office of the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury, in Washington, D.C., or purchased from the reporter.

[39 FR 10898, Mar. 22, 1974, as amended at 40 FR 50717, Oct. 31, 1975]

### § 9.8 Emergency action.

In emergency situations or when in his judgment national security interests require it, the Secretary may vary or dispense with any of the procedures set forth above and may formulate his views without following such procedures.

**§ 9.9 Report.**

A report will be made and published in the FEDERAL REGISTER upon the disposition of each request, application or motion under § 9.3. Copies of the report will be available at the Office of the Assistant Secretary (Enforcement, Operations, and Tariff Affairs), Department of the Treasury.

[40 FR 50718, Oct. 31, 1975]

## PART 10—PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

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AUTHORITY: Sec. 3, 23 Stat. 258, secs. 2-12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551-559, 31 U.S.C. 1026; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949-1953 Comp., p. 1017, unless otherwise noted.

SOURCE: Department Circular 230, Revised, 31 FR 10773, Aug. 13, 1966, unless otherwise noted.

**§ 10.0 Scope of part.**

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing clients before the Internal Revenue Service. Subpart A of this part sets forth rules relating to authority to practice before the Internal Revenue Service; Subpart B of this part prescribes the duties and restrictions relating to such practice; Subpart C of this part contains rules relating to disciplinary proceedings; and Subpart D of this part contains general provisions, including provisions relating to availability of official records.

[42 FR 38352, July 28, 1977]

## Subpart A—Rules Governing Authority To Practice

### § 10.1 Director of practice.

(a) *Establishment of office.* There is established in the Office of the Secretary of the Treasury the office of Director of Practice. The Director of Practice shall be appointed by the Secretary of the Treasury.

(b) *Duties.* The Director of Practice shall act upon appeals from decisions of the Commissioner of Internal Revenue denying applications for enrollment to practice before the Internal Revenue Service; institute and provide for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, and enrolled agents; make inquiries with respect to matters under his jurisdiction; and perform such other duties as are necessary or appropriate to carry out his functions under this part or as are prescribed by the Secretary of the Treasury.

(c) *Acting Director.* The Secretary of the Treasury will designate an officer or employee of the Treasury Department to act as Director of Practice in the event of the absence of the director or of a vacancy in that office.

### § 10.2 Definitions.

As used in this part, except where the context clearly indicates otherwise, the term:

(a) "Practice before the Internal Revenue Service" comprehends all matters connected with presentation to the Internal Revenue Service or any of its officers or employees relating to a client's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a client at conferences, hearings, and meetings. Neither the preparation of a tax return, nor the appearance of an individual as a witness for the taxpayer, nor the furnishing of information at the request of the Internal Revenue Service or any of its officers or employees is considered practice before the Service.

(b) "Attorney" means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia.

(c) "Certified public accountant" means any person who is duly qualified to practice as a certified public accountant in any State, possession, territory, Commonwealth, or the District of Columbia.

(d) "Commissioner" refers to the Commission of Internal Revenue.

[31 FR 10773, Aug. 13, 1966, as amended at 37 FR 1017, Jan. 21, 1972; 42 FR 38352, July 28, 1977]

### § 10.3 Who may practice.

(a) *Attorneys.* Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he is currently qualified as an attorney and is authorized to represent the particular party on whose behalf he acts. An enrollment card issued to such person before the effective date of this regulation shall be invalid and may not be used in lieu of such written declaration.[1]

(b) *Certified public accountants.* Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Service upon filing with the Service a written declaration that he is currently qualified as a certified public accountant and is authorized to represent the particular party on whose behalf he acts. An enrollment card issued to such person before the effective date of this regulation shall be invalid and may not be used in lieu of such written declaration.[1]

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[1] This supersedes the provision contained in a notice of interim course of action published in the FEDERAL REGISTER, Nov. 16, 1965 (30 FR 14331) which permitted attorneys and certified public accountants, who were enrolled as of Nov. 8, 1965, to continue to use their enrollment cards as evidence of authority to practice before the Service.

(c) *Enrolled agents.* Any person enrolled as an agent pursuant to this part may practice before the Internal Revenue Service.

(d) *Enrolled Actuaries.* (1) Any individual who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242 may practice before the Internal Revenue Service upon filing with the Service a written declaration that he/she is currently qualified as an enrolled actuary and is authorized to represent the particular party on whose behalf he/she acts. Practice as an enrolled actuary is limited to representation with respect to issues involving the following statutory provisions.

Internal Revenue Code (Title 26 U.S.C.) sections: 401 (qualification of employee plans), 403(a) (relating to whether an annuity plan meets the requirements of section 404(a)(2)), 404 (deductibility of employer contributions), 405 (qualification of bond purchase plans), 412 (funding requirements for certain employee plans), 413 (application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer), 414 (containing definitions and special rules relating to the employee plan area), 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412), 6057 (annual registration of plans), 6058 (information required in connection with certain plans of deferred compensation), 6059 (periodic report of actuary), 6652(e) (failure to file annual regustration and other notifications by pension plan), 6652(f) (failure to file information required in connection with certain plans of deferred compensation), 6692 (failure to file acuarial report), 7805(b) (relating to the extent, if any, to which an Internal Revenue Service ruling or determination letter coming under the herein listed statutory provisions shall be applied without retroactive effect); and 29 U.S.C. 1083 (relating to waiver of funding for nonqualified plans).

(2) An individual who practices before the Internal Revenue Service pursuant to this subsection shall be subject to the provisions of this part in the same manner as attorneys, certified public accountants and enrolled agents.

(e) *Others.* Any person qualifying under § 10.7 or § 10.5(c) may practice before Internal Revenue Service.

(f) *Government officers and employees; others.* No officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia, may practice before the Service, except that such officer or employee may, subject to the conditions and requirements of these regulations and of 18 U.S.C. 205, represent a member of his immediate family or any other person or estate for which he serves as guardian, executor, administrator, trustee, or other personal fiduciary. No Member of Congress or Resident Commissioner (elect or serving) may practice before the Service in connection with any matter for which he directly or indirectly receives, agrees to receive, or seeks any compensation. 18 U.S.C. 203, 205. Nothing herein shall be construed as prohibiting an officer or employee of the United States as aforesaid, who is otherwise eligible to practice under the provision of this part, from representing others before the Internal Revenue Service when doing so in the proper discharge of his official duties.

(g) *State officers and employees.* No officer or employee of any State, or subdivision thereof, whose duties require him to pass upon, investigate, or deal with tax matters of such State or subdivision, may practice before the Service, if such State employment may disclose facts or information applicable to Federal tax matters.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970; 36 FR 8671, May 11, 1971; 44 FR 4946, Jan. 24, 1979]

### § 10.4 Eligibility for enrollment.

(a) *Enrollment upon examination.* The Commissioner may grant enrollment to an applicant who demonstrates special competence in tax matters by written examination administered by the Internal Revenue Service and who has not engaged in any conduct which would justify the suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part.

(b) *Enrollment of former Internal Revenue Service employees.* The Commissioner may grant enrollment to an applicant who has not engaged in any conduct which would justify the suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part and who, by virtue of his past service and technical experience in the Internal Revenue Service has qualified for such enrollment, as follows:

(1) Application for enrollment on account of former employment in the Internal Revenue Service shall be made to the Commissioner. Each applicant will be supplied a form by the Commissioner, which shall indicate the information required respecting the applicant's qualifications. In addition to the applicant's name, address, citizenship, age, educational experience, etc., such information shall specifically include a detailed ascount of the applicant's employment in the Internal Revenue Service, which account shall show (i) positions held, (ii) date of each appointment and termination thereof, (iii) nature of services rendered in each position, with particular reference to the degree of technical experience involved, and (iv) name of supervisor in such positions, together with such other information regarding the experience and training of the applicant as may be relevant.

(2) Upon receipt of each such application, it shall be transmitted to the appropriate officer of the Internal Revenue Service with the request that a detailed report of the nature and rating of the applicant's services in the Internal Revenue Service, accompanied by the recommendation of the superior officer in the particular unit or division of the Internal Revenue Service that such employment does or does not qualify the applicant technically or otherwise for the desired authorization, be furnished to the Commissioner.

(3) In examining the qualification of an applicant for enrollment on account of employment in the Internal Revenue Service, the Commissioner will be governed by the following policies:

(i) Enrollment on account of such employment may be of unlimited scope or may be limited to permit the presentation of matters only of the particular class or only before the particular unit or division of the Internal Revenue Service for which his former employment in the Internal Revenue Service has qualified the applicant.

(ii) Application for enrollment on account of employment in the Internal Revenue Service must be made within 3 years from the date of separation from such employment.

(iii) It shall be requisite for enrollment on account of such employment that the applicant shall have had a minimum of 5 years continuous employment in the Service during which he shall have been regularly engaged in applying and interpreting the provisions of the Internal Revenue Code and the regulations thereunder relating to income, estate, gift, employment, or excise taxes.

(iv) For the purposes of paragraph (b)(3)(iii) of this section an aggregate of 10 or more years of employment, at least 3 of which occurred within the 5 years preceding the date of application, shall be deemed the equivalent of 5 years continuous employment.

(c) *Natural persons.* Enrollment to practice may be granted only to natural persons.

(d) *Attorneys; certified public accountants.* Enrollment is not available to persons who qualify to practice under § 10.3(a) or (b).

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970; 42 FR 38352, July 28, 1977]

### § 10.5 Application for enrollment.

(a) *Form; fee.* An applicant for enrollment shall file with the Commissioner of Internal Revenue an application on Form 23, properly executed under oath or affirmation. Such application shall be accompanied by a check or money order in the amount set forth on Form 23, payable to the Internal Revenue Service, which amount shall constitute a fee which shall be charged to each applicant for enrollment. The fee shall be retained by the United States whether or not the applicant is granted enrollment.

(b) *Additional information; examination.* The Commissioner, as a condition to consideration of an application for enrollment, may require the applicant to file additional information and to submit to any written or oral examination under oath or otherwise. The Commissioner shall, upon written request, afford an applicant the opportunity to be heard with respect to his application for enrollment.

(c) *Temporary recognition.* Upon receipt of a properly executed application, the Commissioner may grant the applicant temporary recognition to practice pending a determination as to whether enrollment to practice should be granted. Such temporary recognition shall not be granted if the application is not regular on its face; if the information stated therein, if true, is not sufficient to warrant enrollment to practice; if there is any information before the Commissioner which indicates that the statements in the application are untrue; or which indicates that the applicant would not otherwise qualify for enrollment. Issuance of temporary recognition shall not constitute enrollment to practice or a finding of eligibility for enrollment, and the temporary recognition may be withdrawn at any time by the Commissioner.

(d) *Appeal from denial of application.* (1) The Commissioner, in denying an application for enrollment, shall inform the applicant as to the reason(s) therefor. The applicant may, within 30 days after receipt of the notice of denial, file a written appeal therefrom, together with his reasons in support thereof, to the Director of Practice. A decision on the appeal will be rendered by the Director of Practice as soon as practicable.

(2) A decision of the Director of Practice in sustaining a denial of enrollment may be appealed to the Secretary of the Treasury within 30 days after receipt of the decision of the Director.

(Sec. 501, Pub. L. 82-137, 65 Stat. 290; 31 U.S.C. 483a))

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38352, July 28, 1977]

### § 10.6 Enrollment.

(a) *Roster.* The Commissioner shall maintain rosters of all agents who are enrolled to practice, of all persons who have been disbarred or suspended from practice before the Internal Revenue Service, and of persons whose applications for enrollment have been denied.

(b) *Enrollment card.* The Commissioner shall issue an enrollment care to each agent who is enrolled to practice before the Internal Revenue Service after the effective date of this regulation. Each such enrollment card shall be valid so long as the holder shall remain enrolled and in good standing before the Service. Unless advised to the contrary by the Commissioner, any officer or employee of the Internal Revenue Service may consider the holder of a valid enrollment card to be duly authorized to practice before the Service.

(c) *Termination of enrollment.* The enrollment of any agent to whom an enrollment card is issued after the effective date of this regulation shall terminate at such time as such agent may become eligible to practice without enrollment under § 10.3 (a) or (b), and such agent shall forthwith return his enrollment card to the Commissioner of Internal Revenue for cancellation.

(31 U.S.C. 483a)

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38352, July 28, 1977]

### § 10.7 Limited practice without enrollment.

(a) *In general.* Individuals may appear on their own behalf and may otherwise appear without enrollment, provided they present satisfactory identification, in the following classes of cases:

(1) An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or may represent without compensation a member of his immediate family.

(2) Corporations (including parents, subsidiaries or affiliated corporations), trust, estates, associations, or orga-

nized groups may be represented by bona fide officers or regular full-time employees.

(3) Trusts, receiverships, guardianships, or estates may be represented by their trustees, receivers, guardians, administrators or executors or their regular full-time employees.

(4) Any governmental unit, agency, or authority may be represented by an officer or regular employee in the course of his official duties.

(5) Unenrolled persons may participate in rule making as provided by section 4 of the Administrative Procedure Act, 60 Stat. 238 (5 U.S.C. 1003).

(6) Enrollment is not required for representation outside of the United States before personnel of the Internal Revenue Service.

(7) Any individual who is not under disbarment or suspension from practice before the Internal Revenue Service or other practice of his profession by any other authority (in the case of attorneys, certified public accountants, and public accountants) and who signs a return as having prepared it for the taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that it be signed by the person who prepared the return for the taxpayer, may appear without enrollment as the taxpayer's representative, with or without the taxpayer, before revenue agents and examining officers of the Audit Division in the offices of District Directors (but not at the District Conference in a District Director's office) with respect to the tax liability of the taxpayer for the taxable year or period covered by that return. Proper authorization from the taxpayer will be required. All such persons will be subject to such rules regarding standards of conduct, the extent of their authority, and other matters as the Commissioner of Internal Revenue shall prescribe. Such persons will be permitted to represent taxpayers within those limits without enrollment, except that the Commissioner may deny permission to engage in such limited practice to any person who has engaged in conduct which would justify suspension or disbarment of any attorney, certified public accountant, or enrolled agent under the provisions of this part.

(b) *Special appearance.* The Commissioner, subject to such conditions as he deems appropriate, may authorize any person to represent another without enrollment for the purpose of a particular matter.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970]

### § 10.8 Customhouse brokers.

Nothing contained in the regulations in this part shall be deemed to affect or limit the right of a customhouse broker, licensed as such by the Commissioner of Customs in accordance with the regulations prescribed therefor, in any customs district in which he is so licensed, at the office of the District Director of Internal Revenue or before the National Office of the Internal Revenue Service, to act as a representative in respect to any matters relating specifically to the importation or exportation of merchandise under the customs or internal revenue laws, for any person for whom he has acted as a customhouse broker.

## Subpart B—Duties and Restrictions Relating to Practice Before the Internal Revenue Service

### § 10.20 Information to be furnished.

(a) *To the Internal Revenue Service.* No attorney, certified public accountant, or enrolled agent shall neglect or refuse promptly to submit records or information in any matter before the Internal Revenue Service, upon proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, or shall interfere, or attempt to interfere, with any proper and lawful effort by the Internal Revenue Service or its officers or employees to obtain any such record or information, unless he believes in good faith and on reasonable grounds that such record or information is privileged or that the request for, or effort to obtain, such record or information is of doubtful legality.

(b) *To the Director of Practice.* It shall be the duty of an attorney or certified public accountant, who practices before the Internal Revenue Service, or enrolled agent, when requested by the Director of Practice, to provide the Director with any information he may have concerning violation of the regulations in this part by any person, and to testify thereto in any proceeding instituted under this part for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent, unless he believes in good faith and on reasonable grounds that such information is privileged or that the request therefor is of doubtful legality.

### § 10.21 Knowledge of client's omission.

Each attorney, certified public accountant, or enrolled agent who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client is required by the revenue laws of the United States to execute, shall advise the client promptly of the fact of such noncompliance, error, or omission.

[42 FR 38352, July 28, 1977]

### § 10.22 Diligence as to accuracy.

Each attorney, certified public accountant, or enrolled agent shall exercise due diligence:

(a) In preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(b) In determining the correctness of oral or written representations made by him to the Department of the Treasury; and

(c) In determining the correctness of oral or written representations made by him to clients with reference to any matter administered by the Internal Revenue Service.

[35 FR 13205, Aug. 19, 1970, as amended at 42 FR 38352, July 28, 1977]

### § 10.23 Prompt disposition of pending matters.

No attorney, certified public accountant, or enrolled agent shall unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

### § 10.24 Assistance from disbarred or suspended persons and former Internal Revenue Service employees.

No attorney, certified public accountant or enrolled agent shall, in practice before the Internal Revenue Service, knowingly and directly or indirectly:

(a) Employ or accept assistance from any person who is under disbarment or suspension from practice before the Internal Revenue Service.

(b) Accept employment as associate, correspondent, or subagent from, or share fees with, any such person.

(c) Accept assistance from any former government employee where the provisions of § 10.26 of these regulations or any Federal law would be violated.

[44 FR 4943, Jan. 24, 1979]

### § 10.25 Practice by partners of Government employees.

No partner of an officer or employee of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, shall represent anyone in any matter administered by the Internal Revenue Service in which such officer or employee of the Government participates or has participated personally and substantially as a Government employee or which is the subject of his official responsibility.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970]

### § 10.26 Practice by former Government employees, their partners and their associates.

(a) *Definitions.* For purposes of § 10.26. (1) "Assist" means to act in such a way as to advise, furnish information to or otherwise aid another person, directly of indirectly.

(2) "Government employee" is an officer or employee of the United States or any agency of the United States, including a "special government employee" as defined in 18 U.S.C. 202(a), or of the District of Columbia, or of any

State, or a member of Congress or of any State legislature.

(3) "Member of a firm" is a sole practioner or an employee or associate thereof, or a partner, stockholder, associate, affiliate or employee of a partnership, joint venture, corporation, professional association or other affiliation of two or more practitioners who represent non-Government parties.

(4) "Practitioner" is an attorney, certified public accountant, enrolled agent or any other person authorized to practice before the Internal Revenue Service.

(5) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action, with or without knowledge of the action.

(6) "Participate" or "participation" means substantial involvement as a Government employee by making decisions, or preparing or reviewing documents with or without the right to exercise a judgment of approval or disapproval, or participating in conferences or investigations, or rendering advice of a substantial nature.

(7) "Rule" includes Treasury Regulations, whether issued or under preparation for issuance as Notices of Proposed Rule Making or as Treasury Decisions, and revenue rulings and revenue procedures published in the Internal Revenue bulletin. "Rule" shall not include a "transaction" as defined in paragraph (a)(9) of this section.

(8) "Transaction" means any decision, determination, finding, letter ruling, technical advice, contract or approval or disapproval thereof, relating to a particular factual situation or situations involving a specific party or parties whose rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service, or other legal rights, are determined or immediately affected therein and to which the United States is a party or in which it has a direct and substantial interest, whether or not the same taxable periods are involved. "Transaction" does not include "rule" as defined in paragraph (a)(7) of this section.

(b) *General rules.* (1) No former Government employee shall, subsequent to his Government employment, represent anyone in any matter administered by the Internal Revenue Service if the representation would violate 18 U.S.C. 207 (a) or (b) of any other laws of the United States.

(2) No former Government employee who participated in a transaction shall, subsequent to his Government employment, represent or knowingly assist, in that transaction, any person who is or was a specific party to that transaction.

(3) No former Government employee who within a period of one year prior to the termination of his Government employment had official responsibility for a transaction shall, within one year after his Government employment is ended, represent or knowingly assist in that transaction any person who is or was a specific party to that transaction.

(4) No former Government employee shall, within one year after his Government employment is ended, appear before any employee of the Treasury Department in connection with the publication, withdrawal, amendment, modification, or interpretation of a rule in the development of which the former Government employee participated or for which, within a period of one year prior to the termination of his Government employment, he had official responsibility. However, this subparagraph does not preclude such former employee for appearing on his own behalf or from representing a taxpayer before the Internal Revenue Service in connection with a transaction involving the application or interpretation of such a rule with respect to that transaction: *Provided,* That such former employee shall not utilize or disclose any confidential information acquired by the former employee in the development of the rule, and shall not contend that the rule is invalid or illegal. In addition, this subparagraph does not preclude such former employee from otherwise advising or acting for any person.

(c) *Firm representation.* (1) No member of a firm of which a former

Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(1) (other than 18 U.S.C. 207 (b)) or (b)(2) of this section apply to the former Government employee, in that transaction, unless:

(i) No member of the firm who had knowledge of the participation by the Government employee in the transaction initiated discussions with the Government employee concerning his becoming a member of the firm until his Government employment is ended or six months after the termination of his participation in the transaction, whichever is earlier;

(ii) The former Government employee did not initiate any discussions concerning becoming a member of the firm while participating in the transaction or, if such discussions were intitiated, they conformed with the requirements of 18 U.S.C. 208(b); and

(iii) The firm isolates the former Government employee in such a way that he does not assist in the representation.

(2) No member of a firm of which a former Government employee is a member may represent or knowingly assist a person who was or is a specific party in any transaction with respect to which the restrictions of paragraph (b)(3) of this section apply to the former employee, in that transaction unless the firm isolates the former Government employee in such a way that he does not assist in the representation.

(3) When isolation of the former Government employee is required under paragraphs (c)(1) or (c)(2) of this section, a statement affirming the fact of such isolation shall be executed under oath by the former Government employee and by a member of the firm acting on behalf of the firm, and shall be filed with the Director of Practice and in such other place and in the manner prescribed by regulation. This statement shall clearly identify the firm, the former Government employee, and the transaction or transactions requiring such isolation.

(d) *Pending representation.* Practice by former Government employees, their partners and associates with respect to representation in specific matters where actual representation commenced before publication of this regulation is governed by the regulations set forth in the June 1972 amendments to the regulations of this part (published at 37 FR 11676): *Provided,* That the burden of showing that representation commenced before publication is with the former Government employees, their partners and associates.

[42 FR 38352, July 28, 1977]

### § 10.27 Notaries.

No attorney, certified public accountant, or enrolled agent as notary public shall with respect to any matter administered by the Internal Revenue Service take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Internal Revenue Service (26 Op. Atty. Gen. 236).

### § 10.28 Fees.

No attorney, certified public accountant, or enrolled agent shall charge an unconscionable fee for representation of a client in any matter before the Internal Revenue Service.

### § 10.29 Conflicting interests.

No attorney, certified public accountant, or enrolled agent shall represent conflicting interests in his practice before the Internal Revenue Service, except by express consent of all directly interested parties after full disclosure has been made.

### § 10.30 Solicitation.

(a) *Advertising and Solicitation restrictions.* (1) No attorney, certified public accountant, enrolled agent, or other individual eligible to practice before the Internal Revenue Service shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive or unfair statement or claim. For the purposes of this subsection, the prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by State or Federal agencies having jurisdiction over the practioner, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter.

(2) No attorney, certified public accountant, enrolled agent or other individual eligible to practice before the Internal Revenue Service shall make, directly or indirectly, an uninvited solicitation of employment, in matters related to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to: (i) Seeking new business from an existing or former client in a related matter; (ii) solicitation by mailings, the contents of which are designed for the general public; or (iii) non-coercive in-person solicitation by those eligible to practice before the Internal Revenue Service while acting as an employee, member, or officer of an exempt organization listed in sections 501(c) (3) or (4) of the Internal Revenue Code of 1954 (26 U.S.C.).

(b) *Permissible Advertising.* (1) Attorneys, certified public accountants, enrolled agents and other individuals eligible to practice before the Internal Revenue Service, may publish, broadcast, or use in a dignified manner through any means of communication set forth in paragraph (d) of this section:

(i) The name, address, telephone number, and office hours of the practitioner or firm.

(ii) The names of individuals associated with the firm.

(iii) A factual description of the services offered.

(iv) Acceptable credit cards and other credit arrangements.

(v) Foreign language ability.

(vi) Membership in pertinent, professional organizations.

(vii) Pertinent professional licenses.

(viii) A statement that an individual's or firm's practice is limited to certain areas.

(ix) In the case of an enrolled agent, the phrase "enrolled to represent taxpayers before the Internal Revenue Service" or "enrolled to practice before the Internal Revenue Service."

(x) Other facts relevant to the selection of a practitioner in matters related to the Internal Revenue Service which are not prohibited by these regulations.

(2) Attorneys, certified public accountants, enrolled agents and other individuals eligible to practice before the Internal Revenue Service may use, to the extent they are consistent with the regulations in this section, customary biographical insertions in approved law lists and reputable professional journals and directories, as well as professional cards, letterheads and announcements: *Provided,* That: (i) Attorneys do not violate applicable standards of ethical conduct adopted by the American Bar Association, (ii) certified public accountants do not violate applicable standards of ethical conduct adopted by the American Institute of Certified Public Accountants, and (iii) enrolled agents do not violate applicable standards of ethical conduct adopted by either the National Society of Public Accountants or the National Association of Enrolled Agents.

(c) *Fee Information.* (1) Attorneys, certified public accountants, enrolled agents and other individuals eligible to practice before the Internal Revenue Service may disseminate the following fee information:

(i) Fixed fees for specific routine services.

(ii) Hourly rates.

(iii) Range of fees for particular services.

(iv) Fee charged for an initial consultation.

(2) Attorneys, certified public accountants, enrolled agents and other individuals eligible to practice before the Internal Revenue Service may also publish the availability of a written schedule of fees.

(3) Attorneys, certified public accountants, enrolled agents and other

individuals eligible to practice before the Internal Revenue Service shall be bound to charge the hourly rate, the fixed fee for specific routine services, the range of fees for particular services, or the fee for an initial consultation published for a reasonable period of time, but no less than thirty days from the last publication of such hourly rate or fees.

(d) *Communications.* Communications, including fee information, shall be limited to professional lists, telephone directories, print media, permissible mailings as provided in these regulations, radio and television. In the case of radio and television broadcasting, the broadcast shall be pre-recorded and the practitioner shall retain a recording of the actual audio transmission.

(e) *Improper Associations.* An attorney, certified public accountant or enrolled agent may, in matters related to the Internal Revenue Service, employ or accept employment or assistance as an associate, correspondent, or subagent from, or share fees with, any person or entity who, to the knowledge of the practitioner, obtains clients or otherwise practices in a manner forbidden under this section: *Provided,* That a practitioner does not, directly or indirectly, act or hold himself out as an Internal Revenue Service practitioner in connection with that relationship. Nothing herein shall prohibit an attorney, certified public accountant, or enrolled agent from practice before the Internal Revenue Service in a capacity other than that described above.

[44 FR 4943, Jan. 24, 1979]

### § 10.31 Negotiation of taxpayer refund checks.

No attorney, certified public accountant or enrolled agent who is an income tax return preparer shall endorse or otherwise negotiate any check made in respect of income taxes which is issued to a taxpayer other than the attorney, certified public accountant or enrolled agent.

[42 FR 38353, July 28, 1977]

### § 10.32 Practice of law.

Nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

[31 FR 10773, Aug. 13, 1966. Redesignated at 42 FR 38353, July 28, 1977]

## Subpart C—Rules Applicable to Disciplinary Proceedings

### § 10.50 Authority to disbar or suspend.

Pursuant to section 3 of the Act of July 7, 1884, 23 Stat. 258 (31 U.S.C. 1026), the Secretary of the Treasury, after due notice and opportunity for hearing, may suspend or disbar from practice before the Internal Revenue Service any attorney, certified public accountant, or enrolled agent shown to be incompetent, disreputable or who refuses to comply with the rules and regulations in this part or who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970]

### § 10.51 Disreputable conduct.

Disreputable conduct for which an attorney, certified public accountant, or enrolled agent may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to:

(a) Conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty, or breach of trust.

(b) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term "information."

(c) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(d) Willfully failing to make Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof, or concealing assets of himself or another to evade Federal taxes or payment thereof.

(e) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(f) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(g) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, possession, territory, Commonwealth, the District of Columbia, any Federal court of record or any Federal agency, body or board.

(h) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person. Maintaining a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbarment from practice before the Service shall be presumed to be a violation of this provision.

(i) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements knowing them to be false, or circulating or publishing malicious or libelous matter.

[Dept. Circ. 230, Rev., 31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13205, Aug. 19, 1970; 42 FR 38353, July 28, 1977; 44 FR 4946, Jan. 24, 1979]

### § 10.52 Violation of regulations.

Any attorney, certified public accountant, or enrolled agent may be disbarred or suspended from practice before the Internal Revenue Service for willful violation of any of the regulations contained in this part.

### § 10.53 Receipt of information concerning attorneys, certified public accountants and enrolled agents.

If an officer or employee of the Internal Revenue Service has reason to believe that an attorney, certified public accountant, or enrolled agent has violated any provision of this part, or if any such officer or employee receives information to that effect, he shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director of Practice. If any other person has information of such violations, he may make a report thereof to the Director of Practice or to any officer or employee of the Internal Revenue Service.

### § 10.54 Institution of proceeding.

Whenever the Director of Practice has reason to believe that any attorney, certified public accountant, or enrolled agent has violated any provision of the laws or regulations governing practice before the Internal Revenue Service, he may reprimand such person or institute a proceeding for disbarment or suspension of such person. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director of Practice and filed in his office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he has been accorded opportunity to demonstrate or achieve compliance with all lawful requirements.

### § 10.55 Conferences.

(a) *In general.* The Director of Practice may confer with an attorney, certified public accountant, or enrolled agent concerning allegations of misconduct irrespective of whether a proceeding for disbarment or suspension has been instituted against him. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Resignation or voluntary suspension.* An attorney, certified public accountant, or enrolled agent, in order to avoid the institution or conclusion of a disbarment or suspension proceeding, may offer his consent to suspension from practice before the Internal Revenue Service. An enrolled agent may also offer his resignation. The Director of Practice, in his discretion, may accept the offered resignation of an enrolled agent and may suspend an attorney, certified public accountant, or enrolled agent in accordance with the consent offered.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13206, Aug. 19, 1970]

### § 10.56 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him so that he is able to prepare his defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he fails to file his answer as required.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38353, July 28, 1977]

### § 10.57 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified matter is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him by first-class mail, addressed to him at the address under which he is enrolled or at the last address known to the Director of Practice. If service is made upon the respondent or his attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon an attorney, certified public accountant, or enrolled agent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director of Practice, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a disbarment or suspension proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Treasury Department, Washington, D.C. 20220. All papers shall be filed in duplicate.

[Dept. Circ. 230, Rev., 31 FR 10773, Aug. 13, 1966, as amended at 31 FR 13992, Nov. 2, 1966; 42 FR 38354, July 28, 1977]

### § 10.58 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director of Practice or the Administrative Law Judge. The answer shall be filed in duplicate with the Director of Practice.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he knows to be true, or state that he is without sufficient information to form a belief when in fact he possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director of Practice or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Examiner may make his decision by default without a hearing or further procedure.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.59 Supplemental charges.

If it appears that the respondent in his answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has no knowledge sufficient to form a belief, when he in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his disbarment or suspension, the Director of Practice may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare a defense thereto.

### § 10.60 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director of Practice may file a reply in his discretion or at the request of the Administrative Law Judge.

[31 FR 10773, Aug. 13, 1966 as amended at 42 FR 38354, July 28, 1977]

### § 10.61 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Examiner may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.62 Motions and requests.

Motions and requests may be filed with the Director of Practice or with the Administrative Law Judge.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.63 Representation.

A respondent or proposed respondent may appear in person or he may be represented by counsel or other representative who need not be enrolled to practice before the Internal Revenue Service. The Director may be represented by an attorney or other employee of the Internal Revenue Service.

### § 10.64 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the disbarment or suspension of attorneys, certified public accountants, or enrolled agents.

(b) *Powers of Examiner.* Among other powers, the Examiner shall have authority, in connection with any disbarment or suspension proceeding assigned or referred to him, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38353, 38354, July 28, 1977]

### § 10.65 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556 (1966).

(b) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him, he shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make his decision against the absent party by default.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.66 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the disbarment or suspension of attorneys, certified public accountants, and enrolled agents. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 10.67 may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13206, Aug. 19, 1970; 42 FR 38354, July 28, 1977]

### § 10.67 Depositions.

Depositions for use at a hearing may, with the written approval of the Administrative Law Judge be taken by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.68 Transcript.

In cases where the hearing is stenographically reported by a Government contract reported, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy thereof will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking or depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.69 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.70 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of disbarment, suspension, or reprimand or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director of Practice and shall transmit a copy thereof to the respondent or his attorney of record. In the absence of an appeal to the Secretary of the Treasury, or review of the decision upon motion of the Secretary, the decision of the Administrative Law Judge shall without further proceedings become the decisions of the Secretary of the Treasury 30 days from the date of the Administrative Law Judge's decision.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.71 Appeal to the Secretary.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury. The appeal shall be filed with the Director of Practice in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director of Practice, he shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director, he shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director of Practice shall transmit the entire record to the Secretary of the Treasury.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.72 Decision of the Secretary.

On appeal from or review of the initial decision of the Administrative Law Judge, the Secretary of the Treasury will make the agency decision. In making his decision the Secretary of the Treasury will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Secretary's decision shall be transmitted to the respondent by the Director of Practice.

[31 FR 10773, Aug. 13, 1966, as amended at 42 FR 38354, July 28, 1977]

### § 10.73 Effect of disbarment or suspension; surrender of card.

In case the final order against the respondent is for disbarment, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to § 10.75. In case the final order against the respondent is for suspension, the respondent shall not thereafter be permitted to practice before the Internal Revenue Service during the period of suspension. If an enrolled agent is disbarred or suspended, he shall surrender his enrollment card to the Director of Practice for cancellation, in the case of disbarment, or for retention during the period of suspension.

### § 10.74 Notice of disbarment or suspension.

Upon the issuance of a final order disbarring or suspending an attorney, certified public accountant, or enrolled agent, the Director of Practice shall give notice thereof to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal Government. Notice in such manner as the Director of Practice may determine may be given to the proper authorities of the State by which the disbarred or suspended person was licensed to practice as an attorney or accountant.

### § 10.75 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service after the expiration of 5 years following such disbarment. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

[31 FR 10773, Aug. 13, 1966, as amended at 35 FR 13206, Aug. 19, 1970]

## Subpart D—General Provisions

### § 10.90 Records.

(a) *Availability.* There are made available to public inspection at the Office of the Commissioner of Internal Revenue the roster of all persons enrolled to practice and the roster of all persons disbarred or suspended from practice. Other records may be disclosed upon specific request, in accordance with the disclosure regulations of the Internal Revenue Service and the Office of the Secretary.

(b) *Disciplinary procedures.* A request by a practitioner that a hearing in a disciplinary proceeding concerning him be public, and that the record thereof be made available for inspection by interested persons may be granted if agreement is reached by stipulation in advance to protect from disclosure tax information which is confidential, in accordance with the applicable statutes and regulations.

### § 10.91 Effective date of regulations.

The regulations in this part shall become effective on August 29, 1977, and shall supersede all prior regulations related to practice before the Internal Revenue Service except to the extent and subject to the conditions set forth in § 10.26(d).

[42 FR 38354, July 28, 1977]

### § 10.92 Saving clause.

Any proceeding for the disbarment or suspension of an attorney, certified public accountant, or enrolled agent, instituted but not closed prior to the effective date of these revised regulations, shall not be affected by such regulations, except that any such proceeding based solely on conduct which would not justify disbarment or suspension under the provisions of the part as revised shall be dismissed. Any proceeding for disbarment or suspension based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, provided that such conduct would continue to justify disbarment or suspension under the provisions of this part as revised.

### § 10.93 Special orders.

The Secretary of the Treasury reserves the power to issue such special orders as he may deem proper in any cases within the purview of this part.

## PART 11—OPERATION OF VENDING STANDS BY THE BLIND ON FEDERAL PROPERTY UNDER THE CONTROL OF THE TREASURY DEPARTMENT

Sec.

11.1 Purpose.
11.2 Definitions.
11.3 Department policy on permits for vending stands.
11.4 Permits.
11.5 Report on noncompliance with provisions of permit or on other matters.
11.6 Referral of disagreements and appeals on provisions of permit.
11.7 Bureaus' procedures for assuring preference.

AUTHORITY: Sec. 1, 49 Stat. 1559, as amended; 20 U.S.C. 107.

SOURCE: Administrative Circular 112, 29 FR 11531, Aug. 12, 1964, unless otherwise noted.

### § 11.1 Purpose.

This Part prescribes policies and procedures governing the approval, installation, and operation of vending stands and services by the blind under the provisions of the Randolph-Sheppard Vending Stand Act on all Federal property, the maintenance, operation, and protection of which is under the control of the Treasury Department.

### § 11.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) "Act" means the Randolph-Sheppard Vending Stand Act, Act of June 20, 1936, c. 638, 49 Stat. 1559, as amended by the Act of August 3, 1954, c. 655, 68 Stat. 652, 663 (20 U.S.C. 107-107f).

(b) "Bureau" means any bureau, office, or corporation of the Treasury Department and such comparable administrative units as may hereafter be created or made a part of the Department. Where the Department is in control of the maintenance operation, and protection of Federal property, but such property is not operated by a bureau, the Office of Administrative Assistant Secretary of the Treasury shall exercise the power and responsibility of a bureau under this part with regard to such property.

(c) "Federal property" means any building, land or other real property owned, leased, or occupied by any department or agency of the United States or any instrumentality owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.

(d) "Property" or "property location" means any real property of which the Treasury Department or a bureau thereof is in control of the maintenance, operation and protection.

(e) "Permit" means the official authorization given by a bureau on behalf of the Treasury Department, whereby the State licensing agency is authorized to place a vending stand (or stands) to be operated by a licensed blind person (or persons).

(f) "Denial of a permit" means the termination of a permit or the refusal to issue a permit.

(g) "Vending stand" means:

(1) Such shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment as are necessary for the vending of such articles as may be approved by the State licensing agency and the bureau.

(2) Manual or coin-operated vending machines or similar devices for vending such articles.

(h) "State licensing agency" means the State agency designated by the Director of the Office of Vocational Rehabilitation pursuant to the Act to issue licenses to blind persons for the operation of vending stands on Federal and other properties. The term "State" includes, in addition to the 50 States of the Union, the District of Columbia, the Virgin Islands, Puerto Rico, and Guam.

(i) "Licensed blind person" means a blind person who is licensed by a State licensing agency to operate a vending stand on Federal or other property.

### § 11.3 Department policy on permits for vending stands.

(a) In accordance with the provisions of the Randolph-Sheppard Vending Stand Act, it will be the policy of this Department with respect to property of which it is in control of the maintenance, operation, and protection, to issue a permit authorizing the operation of such vending stands without charge for space or necessary utilities as, in the opinion of the State licensing agency, are suitable for operation by a licensed blind person and for which the State licensing agency makes application.

(b) The application of a State licensing agency for a permit may be denied or a permit revoked if the Administrative Assistant Secretary of the Treasury determines that the interest of the United States would be adversely affected or this Department unduly inconvenienced by its issuance or continuance. Loss of revenue by reason of granting a rent free permit for operation of a vending stand by a licensed blind person shall not be a basis for denying such permits as unduly inconveniencing this Department or adversely affecting the interest of the United States. If a bureau believes factors other than loss of revenue justify denial or revocation of permit the matter should be referred to the Administrative Assistant Secretary of the Treasury for decision, together with the recommendation of the head of the bureau.

(c) A permit shall not be issued without first consulting the appropriate State licensing agency, unless express permission is given by the Administrative Assistant Secretary of the Treasury.

(d) Articles shall not be offered for sale on property after issuance of permit which would compete with articles approved for sale under the permit, except that this prohibition shall not apply to (1) sale by cafeterias or restaurants of articles of a type considered as food and usually sold as part of a meal, (2) sales by Coast Guard exchanges, and (3) sale of articles by vending machines. The income from such vending machines which are located within reasonable proximity to and are in direct competition with a licensed vending stand shall be assigned to the licensed blind operator. If a vending machine vends articles of a type authorized by the permit and is so located that it attracts customers who would otherwise patronize the vending stand, such machine shall be considered in reasonable proximity to and in direct competition with the stand.

(e) In the exercise of any function of this Department in connection with planning for construction, alteration, or remodeling of a building which is or will become Federal property, provision shall be made for suitable space for vending stand or stands, if operations of one or more on such property will be feasible. This shall include facilities necessary to the operation of the stand, such as adequate electrical wiring and outlets, heating, plumbing and ventilation. The bureau will consult the State licensing agency in carrying out this provision.

(f) The following factors shall be considered in establishing the location for the vending stand:

(1) It shall be conveniently located with reference to prospective patrons.

(2) It shall be located so as not to create hazard through congestion at, or in entrances, lobbies, corridors, or elevators.

(3) It shall be located and designed so it will not detract from appearance of building.

(4) It shall be located so as to facilitate delivery of supplies and removal of trash and garbage.

(5) It shall be located where most profitable operation may be expected.

The bureau shall consult with the State licensing agencies in applying the foregoing criteria.

### § 11.4 Permits.

(a) Issuance of the permit shall be conditioned upon the vending stand meeting specified standards, including standards relating to appearance, safety, sanitation, and efficiency of operation. Due regard shall be given to provisions of laws and regulations for the public welfare which are applicable or would be applicable, if the property involved were not under jurisdiction of the Federal Government.

(b) The permit shall specify types of articles which may be sold. The articles may include newspapers, periodicals, confections, tobacco products, articles dispensed automatically or in containers or wrapping in which they are placed before receipt by vending stand, and such other related articles as may be approved by the State licensing agency and the bureau. Food and beverages may be permitted even though they are not wrapped, packaged, boxed, or bottled off the premises in individual sales portions, if they can be dispensed under sanitary conditions. The State licensing agency may be required to obtain statements from State or local health authorities to establish that such sale does not endanger health.

(c) The permit shall contain adequate provisions to prevent material defacement or damage to property, including provision that when alterations are to be made by other than the United States, they will be made with approval of, and under supervision of, the appropriate official of the Federal Government.

(d) The permit shall contain any other reasonable conditions necessary for the protection of the Government and prospective patrons of vending stands, including, where appropriate, public liability insurance when food and beverages are prepared on the premises. However, under no circumstances shall conditions be imposed which would require a vending stand to provide a service not usually associated with such a stand.

(e) The State licensing agencies or the blind operators shall secure all the necessary licenses or permits required by the United States, State, or local governments, and shall comply with all lawful orders of the Health Department of the interested city, county, or State and the Medical Units of the Department.

(f) The permit shall describe the location of the vending stand proper and locations of vending machines to be operated on the property.

### § 11.5 Report on noncompliance with provisions of permit or on other matters.

The permit, together with the applicable rules, regulations, and policies of the State licensing agency, shall govern operation of the vending stand, and all officials and employees of the Treasury Department shall encourage conduct and operation in accordance with such permit, rules, regulations, and policies. Bureaus shall cooperate with the State licensing agency with respect to the foregoing and report to it any significant violations or other relevant matters which come to their attention. If a bureau believes that a State licensing agency is not taking proper action, the matter should be referred to the Administrative Assistant Secretary of the Treasury, through the head of the bureau.

### § 11.6 Referral of disagreements and appeals on provisions of permit.

(a) If the individual representing a bureau and responsible for granting a permit is unable to agree with a State licensing agency upon (1) whether a vending stand is to be permitted, (2) a suitable location, (3) whether a vending machine is in competition with a vending stand, or (4) other terms of the permit (including the articles which may be sold), the matter shall be referred to the Administrative Assistant Secretary of the Treasury through the head of the bureau. The Administrative Assistant Secretary will determine the action to be taken. These provisions shall be equally applicable whether disagreement relates to terms and conditions of a new permit or of any amendment of the permit.

(b) Upon appeal, full investigation will be undertaken. A full report shall be obtained from the representative from whose decision the appeal is being taken. The State licensing agency shall be given opportunity to present information. A final decision shall be rendered, within ninety days of the filing of the appeal, by the Administrative Assistant Secretary.

(c) Notification of the decision on appeal and the action taken thereon will be reported by the Administrative Assistant Secretary to the State licensing agency and to the Department of Health, Education, and Welfare. At the end of each fiscal year the Administrative Assistant Secretary will report to the Department of Health, Education, and Welfare the total number of applications for vending stand locations received from State licensing agencies, the number accepted, the number denied, and the number still pending.

### § 11.7 Bureaus' procedures for assuring preference.

(a) The head of each bureau in control of the maintenance, operation, and protection of any Federal property shall maintain procedures in order to insure compliance with this part.

(b) The bureau shall designate a representative for each property location under its control to cooperate with the State licensing agency.

(c) The name of each representative shall be communicated in writing to the State licensing agency of the State in which the property is located.

(d) The representative of the bureau and the State licensing agency, if requested by the latter, shall conduct a joint survey in order to ascertain whether, and if so, in what locations, vending stands may be properly, profitably, and satisfactorily operated by blind persons.

(e) The bureau shall make alterations or repairs that are reasonable and feasible to accommodate the vending stands. If it is not feasible for the bureau to make such alterations or repairs, the State licensing agency may be permitted to arrange for such repairs at its own expense, provided adequate steps are taken to protect the interest of the Federal Government, including an understanding that the State licensing agency will make such repairs and alterations subject to the approval of and under the supervision of the appropriate official of the Federal Government.

## PART 12—EQUAL OPPORTUNITY IN EMPLOYMENT: CONTRACT COMPLIANCE

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AUTHORITY: E.O. 11246, as amended.

SOURCE: 41 FR 6760, Feb. 13, 1976, unless otherwise noted.

## Subpart A—[Reserved]

## Subpart B—Hearing Rules for Sanction Proceedings

### § 12.101 Applicability of rules, waiver, modification.

(a) *Applicability of rules.* These rules of procedure supplement the provisions of 41 CFR 60-1.26(b). The rules govern the practice and procedure for hearings conducted with respect to the imposition of sanctions under sections 208(b), 209 (a) (5) and (6) of Executive Order No. 11246, as amended.

(b) *Waiver, modification.* Upon notice to all parties, the hearing examiner or the Under Secretary may, with respect to matters pending before him modify or waive any rule herein upon a determination that no party will be prejudiced and that the ends of justice will be served thereby.

### § 12.102 Definitions.

As used in these rules:

(a) "Department" means the Department of Treasury.

(b) "Director" means the Director of the Equal Opportunity Program, Department of the Treasury.

(c) "Notice" means, unless the context clearly indicates otherwise, the Notice of Proposed Cancellation, Termination or Ineligibility.

(d) "The order" means Executive Order 11246 of September 24, 1965 (30 FR 12319), as amended (32 FR 14303).

(e) "Party" means a respondent; the Director of the Equal Opportunity Program, Department of the Treasury; and any person or organization participating in a proceeding pursuant to § 15.12(a).

(f) "Respondent" means a person or organization against whom sanctions are proposed because of alleged violations of Executive Order 11246, and the rules, regulations, and orders thereunder.

(g) "Under Secretary" means Under Secretary of the Department of the Treasury.

### § 12.103 Computation of time.

In computing any period of time under these rules or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which event it includes the next following business day.

### § 12.104 Form.

Documents and pleadings filed pursuant to a proceeding herein shall be dated, the original signed in ink, shall show the docket description and title of the proceeding, and shall show the title, if any, and address of the signatory. Copies need not be signed, but the name of the person signing the original shall be reproduced.

### § 12.105 Filing; service.

(a) *Manner of service.* Service upon any party shall be made by the party filing the document or pleading by delivering a copy or mailing a copy to the last known address: *Provided, how-*

*ever,* That the notice of hearing shall be sent by registered mail, return receipt requested, pursuant to 41 CFR 60-1.26(b)(1).

(b) *Upon whom served.* All papers shall be served upon counsel of record and upon parties not represented by counsel.

(c) *Proof of service.* A certificate of the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of said service shall be prima facie proof of service.

(d) *Number of copies.* An original and two copies of documents shall be filed with the hearing examiner designated to hear the case. If no hearing examiner has been assigned, the original and two copies of the documents shall be filed with the Under Secretary.

### § 12.106 Notice of proposed cancellation, termination, or ineligibility.

(a) Actions shall be commenced under this part and 41 CFR 60-1.26(b)(2) by service of a written notice on the contractor or subcontractor against whom the Director seeks the imposition of sanctions. The notice shall indicate whether the Director proposes to request the Under Secretary to cancel or terminate, or cause to be canceled or terminated, in whole or in part, any one or more contracts or subcontracts or to declare the prime contractor or subcontractor ineligible for further contracts or subcontracts under section 209 of the order. The notice shall contain a concise jurisdictional statement, a short and plain statement of the matter furnishing a basis for the imposition of sanctions, an enumeration of the sanctions being proposed, and a citation of the provisions of the order or regulations pursuant to which the requested action may be taken.

(b) *Posting the Notice.* Immediately upon receipt of the Notice, the Respondent shall post it at the affected worksite in a place conspicuous to Respondent's employees.

### § 12.107 Answer.

(a) *Filing and service.* Within 14 days after receipt of the notice of proposed cancellation, termination, or ineligibility, Respondent shall file an answer and a hearing request with the hearing examiner or, if no hearing examiner has been designated, with the Under Secretary.

(b) *Contents; failure to file.* The answer shall admit or deny specifically, and in detail, matters set forth in each allegation of the notice, unless Respondent is without knowledge, in which case the answer shall so state, and the statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure to file an answer shall constitute an admission of all facts recited in the notice.

(c) *Hearing request.* The request for a hearing shall be included as a separate paragraph of the answer.

### § 12.108 Amendments.

The Director may amend the notice once as a matter of course before an answer is filed, and Respondent may amend its answer once as a matter of course not later than 10 days after the filing of the original answer. Other amendments of the notice or of the answer to the notice shall be made only by leave of the hearing examiner. An amended notice shall be answered within 7 days of its service, or within the time for filing an answer to the original notice, whichever period is longer.

### § 12.109 Notice of hearing.

In response to Respondent's request for a hearing, a notice of hearing shall be served on the Respondent pursuant to 41 CFR 60-1.26(b)(1). Such notice shall contain the time, place, and nature of the hearing and the legal authority under which the proceedings are to be held.

### § 12.110 Motions; disposition of motions.

(a) *Motions.* Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the hearing examiner, or with the Under Secretary if no hearing examiner has been designated. If made before or after the hearing itself, these matters shall be in writing. If made at the hearing, they may be stated orally. Within 7 days after a written motion is received, or such other time period as may be fixed, any party may file a response to a motion.

(b) *Disposition of motions.* The hearing examiner, or Under Secretary, may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing thereon, but may overrule or deny such motion without awaiting response: *Provided, however,* That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions. Rulings by the hearing examiner shall not be appealed prior to the transfer of the case to the Under Secretary, but shall be considered by the Under Secretary when the case is transferred to him for decision.

### § 12.111 Participation by interested persons.

(a)(1) To the extent that proceedings hereunder involve employment of persons covered by a collective bargaining agreement, and compliance may necessitate a revision of such agreement, any labor organization which is a signatory to the agreement shall have the right to participate as a party.

(2) Other persons or organizations shall have the right to participate as parties if the final decision of the Under Secretary could adversely affect them or the class they represent and such participation may contribute materially to the proper disposition of the proceedings.

(3) Any person or organization wishing to participate as a party under this paragraph shall file and serve upon the hearing examiner, or upon the Under Secretary, if no hearing examiner has been designated, and all parties a petition within 14 days after the commencement of the action. Such petition shall concisely state (i) petitioner's interest in the proceedings, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(4) The hearing examiner shall determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interest, the hearing examiner may request all such petitioners to designate a single representative to represent all such petitioners: *Provided,* That the representative of a labor organization qualifying to participate under paragraph (a)(1) of this section must be permitted to participate in the proceeding. The hearing examiner shall give each petitioner written notice of the decision on his petition; and if the petition is denied, he shall briefly state the grounds for denial and shall then treat the petition as a request for participation as amicus curiae. The hearing examiner shall give written notice to each party of each petition granted.

(b)(1) Any other interested person or organization wishing to participate as amicus curiae shall file a petition before the commencement of the final hearing with the hearing examiner. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The hearing examiner may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, and that such participation may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in this paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the hearing examiner. He may submit a written statement of position to the hearing examiner prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs and exceptions, and shall serve a copy on each party.

### § 12.112 Admissions as to facts and documents.

Not later than 14 days prior to the date of the hearing, except for good cause shown, or not later than 14 days prior to such earlier date as the hearing examiner may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in, and exhibited with, the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters as to which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 7 days, and not more than 10 days, after receipt of service thereof) the party to whom the request is directed serves upon the requesting party a sworn statement either (a) denying specifically the matters as to which an admission is requested, or (b) setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

### § 12.113 Production of documents and things and entry upon land for inspection and other purposes.

(a) After commencement of the action, any party may serve on any other party a request to produce and/or permit the party, or someone acting on his behalf, to inspect and copy any unprivileged documents, phonorecords, and other compilations which contain or may lead to relevant information and which are in the possession, custody, or control of the party upon whom the request is served. If necessary, translation of data compilations shall be done by the party furnishing the information.

(b) After commencement of the action, any party may serve on any other party a request to permit entry upon designated property which may be relevant to the issues in the proceeding and which is in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying or photographing, testing, or sampling the property or any designated object or area.

(c) Each request shall set forth with reasonable particularity the items to be inspected and shall specify a reasonable time and place for making the inspection and performing the related acts.

(d) The party upon whom the request is served shall respond within 10 days after receipt of service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated. The party submitting the request may move for an order with respect to any objection or to other failure to respond.

### § 12.114 Depositions upon oral examination.

(a) *Depositions; notice of examination.* After commencement of the action, any party may take the testimony of any person, including a party, having personal or expert knowledge of the matters in issue, by deposition upon oral examination for the purposes of discovery and/or the perpetuation of testimony. A party desiring to take a deposition shall give reasonable notice in writing to every other party to the proceeding. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. The notice shall also set forth the categories of documents the witness is to bring with him to the deposition, if any. A copy of the notice shall be furnished to the person to be examined unless his name is unknown.

(b) *Production of witness; obligation of parties; objections.* It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Depositions shall be held within the county in which the witness resides or works. The party or prospective witness may file with the hearing examiner, or with the Under Secretary, if no hearing examiner has been assigned, an objection within 7 days after the identity of such witness first becomes known, stating with particularity the reasons why the party cannot or ought not to produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness. All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is noted or, with due diligence, might have been ascertained.

(c) *Before whom taken; scope of examination; failure to answer.* Depositions may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the deposition is held. At the time and place specified in the notice, the officer designated to take the deposition shall permit each party to examine and cross-examine the witness under oath upon any unprivileged matter which is relevant to the subject matter of the proceeding, or which is reasonably calculated to lead to the production of relevant and otherwise admissible evidence. All objections to questions, except as to the form thereof, and all objections to evidence are reserved until the hearing. A refusal or failure on the part of any person under the control of a party to answer a question shall operate to create a presumption that the answer, if given, would be unfavorable to the controlling party, unless the question is subsequently ruled improper by the hearing examiner or the hearing examiner rules that there was valid justification for the witness' failure or refusal to answer the question: Provided, That the examining party shall note on the record during the deposition the question which the deponent has failed, or refused to answer, and state his intention to invoke the presumption if no answer is forthcoming.

(d) *Subscription; certification; filing.* The testimony shall be reduced to typewriting by the officer taking the deposition or under his direction, and shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him and that the deposition is a true record of the testimony and exhibits given by the witness, and that said officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be noted in the certificate of the officer and the deposition may then be used as fully as though signed. The officer shall immediately deliver any original copy of the transcript, together with his certificate, in person or by mail to the hearing examiner, or to the Under Secretary, if no hearing examiner has been assigned. Copies of the transcript and certificate shall be furnished to all persons desiring them, upon payment of reasonable charges thereof, unless distribution is restricted by order of the hearing examiner for good cause shown.

(e) *Rulings on admissibility; use of deposition.* Subject to the provisions of this section, objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying. Any part or all of a deposition, so far as admissible in the discretion of the hearing examiner, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or was designated to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a

party may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the hearing examiner finds: (i) That the witness is dead; or (ii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iii) that the party offering the deposition has been unable to procure the attendance of the witness by notice; or (iv) upon application and notice, that such exceptional circumstances exist as to make it desirable to allow the deposition to be used.

(4) If only part of a deposition is introduced in evidence by a party, any party may introduce any other parts by way of rebuttal and otherwise.

(f) *Stipulations.* If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used like other depositions.

### § 12.115 Designation.

Hearings shall be held before a hearing examiner designated by the Under Secretary. After service of an order designating a hearing examiner to preside, and until such examiner makes his decision, motions and petitions shall be submitted to him. In the case of the death, illness, disqualification, or unavailability of the designated hearing examiner, another hearing examiner may be designated to take his place.

### § 12.116 Authority and responsibilities.

The hearing examiner shall propose findings and conclusions to the Under Secretary on the basis of the record before him. In order to do so, he shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to those ends, including, but not limited to, the power to:

(a) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding by consent of the parties or upon his own motion;

(b) Require parties to state their position with respect to the various issues in the proceeding;

(c) Require parties to produce for examination those relevant witnesses and documents under their control;

(d) Administer oaths;

(e) Rule on motions, and other procedural items on matters pending before him;

(f) Regulate the course of the hearing and conduct of participants therein;

(g) Examine and cross-examine witnesses, and introduce into the record documentary or other evidence;

(h) Receive, rule on, exclude or limit evidence, and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;

(i) Fix time limits for submission of written documents in matters before him and extend any time limits established by this part upon a determination that no party will be prejudiced and that the ends of justice will be served thereby;

(j) Impose appropriate sanctions against any party or person failing to obey an order under these rules which may include:

(1) Excluding all testimony of an unresponsive or evasive witness, or determining that the answer of such witness, if given, would be unfavorable to the party having control over him; and

(2) Expelling any party or person from further participation in the hearing;

(k) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice;

(l) Recommend whether the Respondent is in current violation of Executive Order 11246, as amended, and applicable rules, regulations, and orders, as well as the nature of whatever corrective action may be necessary to bring the Respondent into compliance with the equal employment opportunity clause;

(m) Recommend to the Under Secretary the adoption of a consent order agreed to by the parties in settlement of the issues in a proceeding; and

(n) Take any action authorized by these rules.

### § 12.117 Appearances.

(a) *Representation.* The parties or other persons or organizations participating pursuant to § 12.111 have the right to be represented by counsel.

(b) *Failure to appear.* In the event that a party appears at the hearing and no party appears of the opposing side, the party who is present shall have an election to present his evidence in whole or such portion thereof sufficient to make a prima facie case before the hearing examiner. Failure to appear at the hearing shall not be deemed to be a waiver of the right to be served with a copy of the hearing examiner's recommended decision and to file exceptions to it.

### § 12.118 Appearance of witnesses.

(a) A party wishing to procure the appearance at the hearing of any person having personal or expert knowledge of the matters in issue shall serve on the prospective witness a notice setting forth the time, date, and place at which he is to appear for the purpose of giving testimony. The notice shall also set forth the categories of documents the witness is to bring with him to the hearing, if any. A copy of the notice shall be filed with the hearing examiner and additional copies shall be served upon the opposing parties.

(b) It shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at the time and place, and on the date, set forth in the notice, if that party has control over such person. Each party shall be deemed to have control over its officers, agents, employees, and members. Due regard shall be given to the convenience of witnesses in scheduling their testimony so that they will be detained no longer than reasonably necessary.

(c) The party or prospective witness may file an objection within 7 days after the identity of such witness first becomes known, stating with particularity the reasons why the party cannot produce a requested witness. The party serving the notice may move for an order with respect to such objection or failure to produce a witness.

### § 12.119 Evidence; testimony.

Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied, as the hearing examiner directs. A witness shall be available for cross-examination, and, at the discretion of the hearing examiner, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding. The hearing examiner may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

### § 12.120 Objections; exceptions.

(a) *Objections.* If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the hearing examiner may be relied upon subsequently in the proceedings.

(b) *Exceptions.* Formal exception to an adverse ruling is not required. Rulings by the hearing examiner shall not be appealed prior to the transfer of the case to the Under Secretary, but shall be considered by the Under Secretary upon filing exceptions to the hearing examiner's recommendations and conclusions.

### § 12.121 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing examiner excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the offeror contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in written form or consists of reference to documents, a copy of such evidence shall be marked for identification and shall accompany the record as the offer of proof.

### § 12.122 Public documents.

Whenever a party offers a public document, or part thereof, in evidence, and such document, or part thereof, has been shown by the offeror to be reasonably available to the public, such documents need not be produced or marked for identification, but may be offered for official notice as a public document item by specifying the document or relevant part thereof.

### § 12.123 Ex parte communications.

The hearing examiner shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. No employee or agent of the Federal Government engaged in the investigation and prosecution of this case shall participate or advise in the rendering of the recommended or final decision.

### § 12.124 Oral argument.

Any party shall be entitled upon request to a reasonable period between the close of evidence and termination of the hearing for oral argument. Oral argument shall be included in the official transcript of the hearing.

### § 12.125 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the hearing examiner. Transcripts of testimony may be obtained from the official reporter by the parties and the public at rates not to exceed the applicable rates fixed by the contract between the Department and the reporter unless distribution is limited by order of the hearing examiner for good cause shown. Upon notice to all parties, the hearing examiner may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

### § 12.126 Summary judgment.

(a) *For Director.* At any time after the expiration of 14 days from the commencement of the action or after service of a motion for summary judgment by the Respondent, the Director may move the hearing examiner with or without supporting affidavits for a summary judgment in his favor upon all claims or any part thereof.

(b) *For Respondent.* The Respondent may, at any time after commencement of the action, move the hearing examiner with or without supporting affidavits for a summary judgment in his favor as to all claims or any part thereof.

(c) *Other parties.* Any other party to a formal proceeding under this part may support or oppose motions for summary judgment made by the Director or Respondent, in accordance with this section, but may not move for a summary judgment in his own behalf.

(d) *Motion and proceedings thereon.* The motion for summary judgment shall be served upon all parties and filed with the hearing examiner or, if no hearing examiner has been designated, with the Under Secretary, at least 15 days before the time fixed for any hearing on the motion. The adverse party or parties may serve opposing affidavits prior to the day of any hearing on the motion. The judgment sought shall be rendered forthwith if the notice and answer, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment rendered for or against the Director or the Respondent shall constitute the hearing examiner's findings and recommendations to the Under Secretary on the issues involved. Hearings on motion made under this section shall be scheduled by the hearing examiner, or the Under Secretary.

(e) *Case not fully adjudicated on motion.* If on motion under this section judgment is not rendered upon the whole case for all the relief asked and a final hearing is necessary, the hearing examiner shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. He shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which relief is not in controversy, and directing such further proceedings as are just. At the hearing on the merits, the facts so specified shall be deemed established, and the final hearing shall be conducted accordingly.

(f) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The hearing examiner may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary judgment is made and supported as provided in this section, an adverse party may not rest upon the mere allegations or denials in his notice or answer, but his response, by affidavit or as otherwise provided in this section, must set forth specific facts showing there is a genuine issue for final hearing. If he does not so respond, summary judgment, if appropriate, shall be rendered against him.

(g) *When affidavits are unavailable.* Should it appear from the affidavits of a party opposing the motion that he cannot for the reasons stated present by affidavit facts essential to justify his opposition, the hearing examiner may refuse the application for summary judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or make such other orders as are just.

(h) *Affidavits made in bad faith.* Should it appear to the satisfaction of the hearing examiner at any time that any of the affidavits presented pursuant to this section are presented in bad faith or solely for the purpose of delay, the hearing examiner may make such orders and impose such sanctions as may be appropriate against the offending party.

### § 12.127 Proposed findings of fact and conclusions.

Within 20 days after receipt of the transcript of the testimony, each party and amicus may file a brief with the hearing examiner. Such briefs shall be served simultaneously on all parties and amici, and a certificate of service shall be furnished to the hearing examiner. Requests for additional time in which to file a brief shall be made to the hearing examiner, in writing, and copies shall be served simultaneously on the other parties. Requests for extensions shall be received not later than 3 days before the date such briefs are due. No reply brief may be filed except by special permission of the hearing examiner.

### § 12.128 Record for recommended decision.

The transcript of testimony, exhibits, and all papers, documents, and requests filed in the proceedings, including briefs, but except the correspondence section of the docket, shall constitute the record for decision.

### § 12.129 Recommended decision.

Within 20 days after the filing of briefs, or, if the parties elect not to file such documents, not more than 20 days after the close of the hearing, the hearing examiner shall recommend findings, conclusions, and a decision. These recommendations shall be certified, together with the record for recommended decision, to the Under Secretary for his decision. The recommended findings, conclusions, and decisions shall be served on all parties and amici to the proceeding.

### § 12.130 Exceptions to recommended decisions.

Within 14 days after receipt of the hearing examiner's recommended findings, conclusions, and decisions, any party may submit exceptions to said recommendation. These exceptions may be responded to by other parties within 10 days of their receipt by said parties. All exceptions and responses shall be filed with the Under Secretary, Service of such briefs or exceptions and responses thereto shall be made simultaneously on all parties to the proceeding, and a certificate of service shall be furnished to the Under Secretary. Requests to the Under Secretary for additional time in which to file exceptions and responses thereto shall be served simultaneously on other parties. Requests for extensions must be received no later than 3 days before the exceptions are due.

### § 12.131 Record for Final Treasury Department decision.

The record for the Treasury Department final decision shall consist of the record for recommended decision, the rulings and recommended decision of the hearing examiner, and the exceptions and briefs filed subsequent to the hearing examiner's decision.

### § 12.132 Final Treasury Department decision.

After expiration of the time for filing briefs and exceptions, the Under Secretary or higher Treasury Department official shall make a decision for the Department on the basis of the record. This decision shall be final upon the approval of the Director, Office of Federal Contract Compliance, Department of Labor. A copy of the final Treasury Department decision shall be served on all parties and amici to the proceeding.

### § 12.133 Submission of final Treasury Department decision to OFCC.

The Under Secretary shall submit the proposed final Treasury Department decision to the Director, Office of Federal Contract Compliance, Department of Labor, for approval.

## PART 13—PROCEDURES FOR PROVIDING ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN PROTECTING FOREIGN DIPLOMATIC MISSIONS

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13.4 Requests for protection and advance notices of reimbursement requests.
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APPENDIX I—FORM OF REQUEST FOR ASSISTANCE
APPENDIX II—FORM OF BILL FOR REIMBURSEMENT

AUTHORITY: Secs. 202 and 208, title 3, U.S. Code, as amended and added, respectively by Pub. L. 94-196 (89 Stat. 1109); 5 U.S.C. 301.

SOURCE: 41 FR 55179, Dec. 17, 1976, unless otherwise noted.

### § 13.1 Purpose.

This part prescribes the procedures governing protective and financial assistance to State and local governments when an extraordinary protective need requires the protection of foreign diplomatic missions as authorized by sections 202 and 208 of title 3, U.S. Code, as amended and added, respectively, by Pub. L. 94-196 (89 Stat. 1109).

### § 13.2 Definitions.

As used in this part, these terms shall have the following meaning:

(a) The term "Assistant Secretary" means the Assistant Secretary of the Treasury (Enforcement and Operations).

(b) The term "extraordinary protective need" means a need for protection requiring measurable reinforcements of police personnel or equipment, or both, significantly beyond the ordinary deployment of the State or local government, arising out of actual or potential violence related to: (1) Confrontations between nationalist or other groups, (2) threats or acts of violence by terrorist or other groups, (3) a specific diplomatic event or visit, or (4) a specific international event.

(c) The term "foreign diplomatic mission" means a mission (including foreign consular offices) of a foreign country located in the United States.

(d) The term "full time officers" means permanent officers whose duties as foreign diplomatic officers occupy their full time.

(e) The term "international organization" means those international organizations designated by Presidential Executive Order as being entitled to the privileges, immunities, and exemptions accorded under the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288).

(f) The term "metropolitan area" means a city in the United States (other than the District of Columbia) and those areas contiguous to it.

(g) The term "observer mission" means a mission invited to participate in the work of an international organization by that organization. The invitation to participate shall be extended by the international organization pursuant to the same internal rules of the international organization as are applicable to any permanent mission.

(h) The term "permanent mission" means a fixed continuing mission staffed by full time officers and maintained by a member state of an international organization.

(i) The term "temporary domicile" means a domicile of limited duration of a visiting foreign dignitary or officer in connection with a visit to a permanent or observer mission to an international organization in a metropolitan area.

[41 FR 55179, Dec. 17, 1976, as amended at 45 FR 30621, May 9, 1980]

### § 13.3 Eligibility to receive protection or reimbursement.

(a) Protection, as determined by the Assistant Secretary, will be provided by the United States Secret Service Uniformed Division, pursuant to section 202 of title 3, U.S. Code, as amended by Pub. L. 94-196, only to foreign diplomatic missions located in metropolitan areas (other than the District of Columbia) where there are located twenty or more such missions, as determined by the Secretary of State, which are headed by full time officers. According to present State Department figures, the following metropolitan areas have 20 or more such foreign diplomatic missions: Chicago, Houston, Los Angeles, Miami, New York City, New Orleans and San Francisco. The protection provided by State or local governments rather than the United States Secret Service Uniformed Division will be reimbursed pursuant to section 208(a) of title 3, U.S. Code and §§ 13.6, 13.7 and 13.8 of this part.

(b) Protection or reimbursement will be provided for the metropolitan areas described in paragraph (a) of this section only if:

(1) The affected metropolitan area requests such protection or reimbursement;

(2) The Assistant Secretary determines that an extraordinary protective need exists; and

(3) The extraordinary need arises in association with a visit to or occurs at or, pursuant to § 13.6, in the vicinity of: (i) A permanent mission to an international organization of which the United States is a member, (ii) an observer mission invited to participate in the work of an international organization of which the United States is a member, or (iii) in the case of a visit by a foreign official or dignitary to participate in an activity of an international organization of which the United States is a member, a foreign diplomatic mission, including a consular office of the same country as the visitor.

(c) Protection (or reimbursement) may be extended at places of temporary domicile in connection with a visit under paragraph (b) of this section.

(d) Where an extraordinary protective need exists, protection (or reimbursement) may be extended to missions as described in §§ 13.3(b)(3) (i) and (ii) whether or not associated with a visit by a foreign dignitary.

[45 FR 30621, May 9, 1980]

### § 13.4 Requests for protection and advance notices of reimbursement requests.

(a) In cases where they believe that an extraordinary protective need exists, the State or local governments may request that protection be provided by the United States Secret Service Uniformed Division; or they may give advance notice of their intention to provide, on a reimbursable basis, all or part of the protection themselves.

(1) Requests for protection or advance notices of reimbursement requests shall be made to: Assistant Secretary (Enforcement and Operations), Department of the Treasury, Washington, DC 20220. Each government requesting the protection authorized pursuant to section 202 of title 3, U.S. Code, as amended by Pub. L. 94-196, or which intends to seek reimbursement pursuant to section 208(a) of title 3, U.S. Code and §§ 13.6 and 13.7 of this part, shall submit an application describing the extraordinary protective need. Applications made pursuant to this section shall be submitted to the Assistant Secretary 14 days before the extraordinary protective need arises. In association with a visit, the application shall include the name and title of the visiting foreign official or dignitary, the country he represents, and the name and location of the international organization or mission he will be visting. The application shall also include, if available, the temporary domicile of the visiting official or dignitary and his schedule, including dates and times of arrival and departure from the United States. If the extraordinary protective need occurs at a permanent mission to an international organization of which the United States is a member or an observer mission invited to participate in the work of such organization, or if another foreign diplomatic mission of the country qualifies under §§ 13.3 (b) or (d), the application shall include the name and location of the mission.

(b) State and local governments shall also indicate on the application whether they are requesting the use of the United States Secret Service Uniformed Division or whether they are giving advance notice of their intention to provide, on a reimbursable basis, all or part of the protection themselves. In order to assist the Assistant Secretary in determining whether to utilize the United States Secret Service Uniformed Division to meet all or part of the extraordinary protective need, or to utilize, with their consent, the services, personnel, equipment, and facilities of the State or local government, or both, the application must include an estimate of the approximate number of personnel by grade and rank, the services, equipment, and facilities required, along with an estimate of the cost of such personnel, services, equipment and facilities. This application must be submitted in a format consistent with that illustrated in Appendix I of this part.

(1) Upon receipt of a request for protection pursuant to paragraph (a)(1) of this section and for the purposes of reimbursement pursuant to §§ 13.6 and 13.7, the Assistant Secretary will determine whether an extraordinary protective need exists and whether the United States Secret Service Uniformed Division will be used for all, part or none of the protection. In making determinations, the Assistant Secretary may consult with appropriate Federal, State and local government agencies.

[45 FR 30621, May 9, 1980]

### § 13.5 Utilization of the services, personnel, equipment, and facilities of State and local governments.

The Assistant Secretary may decide to utilize, on a reimbursable basis, the services, personnel, equipment, and facilities of State and local governments of the affected metropolitan area desiring to provide protection, or he may utilize the United States Secret Service Uniformed Division, or both. If the United States Secret Service Uniformed Division is utilized to meet all the extraordinary protective need, the governments of the affected metropolitan area will not be reimbursed. If the United States Secret Service Uniformed Division is utilized to meet part of the extraordinary protective needs, the governments of the affected metropolitan area will be reimbursed for that qualifying portion of the protection which is provided by State and local police authorities. If the Assistant Secretary decides to utilize, with their consent, the services, personnel, equipment, and facilities of such State and local governments to meet the extraordinary protective need, he will so notify the government as soon as possible after receipt of a request for protection or an advance notice of a reimbursement request made pursuant to § 13.4.

[45 FR 30622, May 9, 1980]

### § 13.6 Reimbursement of State and local governments.

(a) State and local governments providing services, personnel, equipment, or facilities to the affected metropolitan area pursuant to Section 13.5 may forward to the Assistant Secretary a bill for reimbursement for the personel, equipment, facilities, and services utilized in meeting the extraordinary protective need. The bill shall be in accordance with the format in Appendix II of this part. The Assistant Secretary will reimburse only those costs directly related to the extraordinary protective need including personnel and equipment costs resulting from assignments made to assist in providing security at an otherwise qualified location in connection with the arrival, departure, or during the visit of a foreign dignitary. Reimbursable costs will also include the costs for establishing both fixed posts at a qualified location and protective perimeters outside of a qualified location when it is clearly established to the satisfaction of the Assistant Secretary that such assignments were necessary to assure the safety of the qualified location. Overhead and administrative costs associated with an extraordinary protective need are reimbursable as either a flat 18 percent of the total extraordinary protective need costs, or, if such costs can be clearly segregated from routine police costs, on a dollar-for-dollar basis. The jurisdiction seeking such reimbursement may select either method but may not use both. For the purposes of reimbursement the Assistant Secretary will, in all cases, determine when the extraordinary protective need began and terminated.

[45 FR 30622, May 9, 1980]

### § 13.7 Reimbursement when the Assistant Secretary makes no determination to utilize State and local government services, personnel, equipment and facilities.

(a) Where events require the State or local governments of the affected metropolitan area to provide protection to meet an extraordinary protective need otherwise qualifying for reimbursement, such reimbursement may be made even if the provisions of §§ 13.4 and 13.5 have not been complied with fully. In such circumstances the provisions of § 13.6 shall apply.

(b) In cases where State or local governments, or both, utilized their own services, personnel, equipment, and facilities to provide protection for an extraordinary protective need, and no request for protective assistance pursuant to § 13.4 was made because the extraordinary protective need occurred prior to the promulgation of this Part but after July 1, 1974, an application by such government to the Assistant Secretary for reimbursement otherwise conforming to the requirements of this part will be considered.

[41 FR 55179, Dec. 17, 1976, as amended at 45 FR 30622, May 9, 1980]

### § 13.8 Protection for motorcades and other places associated with a visit qualifying under section 202(7) of title 3, U.S. Code.

(a) State and local governments furnishing services, personnel, equipment, and facilities to provide protection for motorcades and at other places associated with a visit qualifying under section 202(7) of title 3, U.S. Code may forward to the Assistant Secretary a bill for reimbursement for the personnel, equipment, facilities, and services utilized in providing such protection.

(b) Requests for payments under this section shall conform to the procedures established elsewhere in this Part governing reimbursements arising out of an extraordinary protective need.

[45 FR 30622, May 9, 1980]

## APPENDIX I (F)—ESTIMATED OVERHEAD AND ADMINISTRATIVE COSTS

Date:———————————

*Select Only One Method*

—— 1. Reimbursement for overhead and administrative costs will be requested as a flat 18 percent of the total extraordinary protective need cost as provided in section 13.6 of these regulations.

—— 2. Reimbursement for overhead and administrative costs will be requested on a dollar-for-dollar basis. Computation of these costs will be made using the below described method:

(Explain in detail how all of these costs can be directly and exclusively attributed to the extraordinary protective need.)

[45 FR 30622, May 9, 1980]

## APPENDIX II (F)—OVERHEAD AND ADMINISTRATIVE COSTS

Date:————————————————

*Select Only One Method*

———— 1. Reimbursement for overhead and administrative costs is requested as a flat 18 percent of the total extraordinary protective need costs as provided in section 13.6 of these regulations.

———— 2. Reimbursement for overhead and administrative costs is requested on a dollar-for-dollar basis. Computation of these costs has been made using the below described method:

(Explain and show in detail how all of these costs have been directly and exclusively attributed extraordinary protective need costs).

Dated: ————————————————

[45 FR 30622, May 9, 1980]

## APPENDIX I—FORM OF REQUEST FOR ASSISTANCE

I hereby request assistance from the Department of the Treasury pursuant to Section 202 of Title 3, U.S. Code, as amended by Pub. L. 94-196. This assistance is needed to enable the affected metropolitan area of ———— to meet an extraordinary protective need, which is expected to arise on ———— (date).

The nature of the extraordinary protective need prompting this request is as follows:

(If in association with a visit, include the name and title of the visiting foreign official or dignitary, the country represented and the name and location of the international organization involved and/or mission to be visited. The temporary domicile of the visiting official or dignitary and his schedule, including dates and times of arrival and departure from the United States, if available, must also be included. If the extraordinary protective need occurs at or, pursuant to § 13.6 of 31 CFR Part 13, in the vicinity of, a permanent mission to an international organization of which the United States is a member or at an observer mission invited to participate in the work of the organization, the application shall include the name and location of the mission. If the extraordinary protective need occurs at a foreign diplomatic mission, including a consular office, in conjunction with a qualifying visit by a foreign official or dignitary of the same country as that mission, the application shall include the name and location of the mission or office. If, pursuant to § 13.8, the visiting foreign official is to travel by motorcade and/or visit locations other than his foreign mission or temporary domicile, the application shall include a description of the anticipated motorcade routes and all stops on the routes as well as the name (or description) and location of any other places to be visited.

The ———— (Government entity) ———— (is or is not) ———— prepared to provide ———— (all or a portion of) the protection required to meet this need. Attached is an estimate of the appropriate number of personnel, by grade and rank, and the specific services, equipment and facilities which will be required to meet this extraordinary protective need, along with an estimate of the cost of such personnel, services, equipment, and facilities.

(Date) ————————————————

————————————————

(State or local government of the affected metropolitan area)

————————————————

(Signature)

————————————————

(Title)

[45 FR 30622, May 9, 1980]

## APPENDIX II—FORM OF BILL FOR REIMBURSEMENT

I hereby request that ———— (Governmental entity) be reimbursed by the Department of the Treasury pursuant to sections 202 and 208 of title 3, U.S. Code, as amended and added, respectively, by Public Law 94-196 (89 Stat. 1109) (and/or pursuant to Public Law 96-74) for expenses incurred while providing an adequate level of protection during the extraordinary protective need arising in association with a visit of ———— (Official or dignitary's name and title) of ———— (Country) to participate in the work of ———— (International Organization) or occurring at the ———— (Permanent or observer mission) to ———— (International organization) during the period ———— (Date) through ———— (Date).

I certify that the level of protection provided was both reasonable and necessary; that the costs herein billed are only those direct costs associated with meeting the extraordinary protective need; and that the costs herein billed are not costs of an indirect nature such as administrative costs, overhead, and depreciation, except as provided in § 13.6(a) of 31 CFR 13.

Access to all records, accounts, receipts, etc., pertaining to the costs herein billed will be accorded to representatives of the

Assistant Secretary (Enforcement and Operations) and the General Accounting Office at such reasonable times and places as may be mutually agreed upon by said representatives and ———— (Governmental entity).

Date: ————

————

(Signature)

————

(Title)

[45 FR 30623, May 9, 1980]

## PART 14—RIGHT TO FINANCIAL PRIVACY ACT

Sec.
14.1 Definitions.
14.2 Purpose.
14.3 Authorization.
14.4 Contents of Request.
14.5 Certification.

AUTHORITY: Sec. 1108, Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et. seq.*, 12 U.S.C. 3401 *et. seq.*; (5 U.S.C. 301); and Reorganization Plan No. 26 of 1950.

SOURCE: 44 FR 16909, Mar. 20, 1979, unless otherwise noted.

### § 14.1 Definitions.

For purposes of this regulation, the term:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in Section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative bank), credit union, or consumer financial institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Person" means an individual or a partnership of five or fewer individuals.

(d) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

(e) "Law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(f) "Departmental unit" means those offices, divisions, bureaus, or other components of the Department of the treasury authorized to conduct law enforcement inquiries.

(g) "Act" means the Right to Financial Privacy Act of 1978.

### § 14.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a financial institution pursuant to the formal written request procedure authorized by Section 1108 of the Act, and to set forth the conditions under which such requests may be made.

### § 14.3 Authorization.

Departmental units are hereby authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(c) The request is issued by a supervisory official of a rank designated by the head of the requesting Departmental unit. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 14.4; and

(e) The notice requirements set forth in Section 1108(4) of the Act, or the requirements pertaining to delay of notice in Section 1109 of the Act are satisfied, except in situations where no notice is required. (e.g., Section 1113(g))

### § 14.4 Contents of Request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Department unit. It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

### § 14.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, an official of a rank designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

## PART 15—POST EMPLOYMENT CONFLICT OF INTEREST

### Subpart A—General Provisions

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15.737-2 Definitions.
15.737-3 Director of Practice.
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Sec.

### Subpart C—Administrative Enforcement Proceedings

15.737-7 Authority to prohibit practice.
15.737-8 Special orders.
15.737-9 Receipt of information concerning former Treasury employee.
15.737-10 Conferences.
15.737-11 Institution of proceeding.
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15.737-27 Decision of the General Counsel.
15.737-28 Notice of disciplinary action.

### Subpart D—Other Departmental Proceedings

15.737-29 Review by the General Counsel.

AUTHORITY: 92 Stat. 1864 (18 U.S.C. 207), as amended, except as otherwise noted.

SOURCE: 45 FR 39842, June 12, 1980, unless otherwise noted.

### Subpart A—General Provisions

### § 15.737-1 Scope.

This part contains rules governing discipline of a former officer or employee of the Department of the Treasury because of a post employment conflict of interest. Such discipline may include prohibition from practice before the Department or a separate statutory agency thereof as those terms are defined in this part.

### § 15.737-2 Definitions.

For the purpose of this part—(a) The term "Department" means the Department of the Treasury and includes the separate statutory agencies thereof.

(b) The term "Director" means the Director of Practice.

(c) The term "General Counsel" means the General Counsel of the Department.

(d) The term "practice" means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department or, where applicable, to a separate statutory agency thereof on a pending matter of business on behalf of any other person (except the United States).

(e) The term "separate statutory agency thereof" means an agency or bureau within the Department designated by rule by the Director, Office of Government Ethics, as a separate agency or bureau. The Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, United States Secret Service, Bureau of the Mint, United States Customs Service, Bureau of Engraving and Printing, and Comptroller of the Currency were so designated effective July 1, 1979.

### § 15.737-3 Director of Practice.

There is, in the Office of the Secretary of the Treasury, the Office of Director of Practice. The Director shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

### § 15.737-4 Other discipline.

For activity alleged to violate 18 U.S.C. 207 (a), (b) or (c), the Director may also bring a disciplinary proceeding pursuant to the regulations governing practice before the Bureau of Alcohol, Tobacco and Firearms or the Internal Revenue Service as found in 31 CFR Part 8 and 31 CFR Part 10, respectively. Such proceeding may be consolidated with any proceeding brought pursuant to this part.

### § 15.737-5 Records.

There are made available to public inspection at the Office of Director of Practice the roster of all persons prohibited from practice before the Department. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

## Subpart B—Rules Applicable to Post Employment Practice by Officers and Employees of the Department

### § 15.737-6 Interpretative standards.

A determination that a former officer or employee of the Department violated 18 U.S.C. 207 (a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated by the Office of Government Ethics and published at 5 CFR Part 737.

## Subpart C—Administrative Enforcement Proceedings

### § 15.737-7 Authority to prohibit practice.

Pursuant to 18 U.S.C. 207(j), if the General Counsel finds, after notice and opportunity for a hearing, that a former officer or employee of the Department violated 18 U.S.C. 207 (a), (b) or (c), the General Counsel in his/her discretion may prohibit that person from engaging in practice before the Department or a separate statutory agency thereof for a period not to exceed five years, or may take other appropriate disciplinary action.

### § 15.737-8 Special orders.

The General Counsel may issue special orders as he/she may consider proper in any case within the purview of this part.

### § 15.737-9 Receipt of information concerning former Treasury employee.

If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated 18 U.S.C. 207 (a), (b) or (c), or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Department of the Treasury. If any other person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Department.

The Inspector General shall refer any information he/she deems warranted to the Director.

### § 15.737-10 Conferences.

(a) *In general.* The Director may confer with a former officer or employee concerning allegations of misconduct irrespective of whether an administrative disciplinary proceeding has been instituted against him/her. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Voluntary suspension.* A former officer or employee, in order to avoid the institution or conclusion of a proceeding, may offer his/her consent to suspension from practice before the Department or a separate statutory agency thereof. The Director in his/her discretion, may suspend a former officer or employee in accordance with the consent offered.

### § 15.737-11 Institution of proceeding.

(a) Whenever the Director has reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207 (a), (b) or (c), he/she may reprimand such person or institute an administrative disciplinary proceeding for that person's suspension from practice before the Department or a separate statutory agency thereof. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

(b) The Director shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

### § 15.737-12 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer as required.

### § 15.737-13 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to him/her at the last address known to the Director. If service is made upon the respondent or his/her attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of such service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the Director of Practice, Department of the Treasury, Washington, D.C. 20220. All papers shall be filed in duplicate.

### § 15.737-14 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Director or the Administrative Law Judge. The answer shall be filed in duplicate with the Director.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she knows to be true, or state that he/she is without sufficient information to form a belief when in fact he/she possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

### § 15.737-15 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director may file a reply in his/her discretion or at the request of the Administrative Law Judge.

### § 15.737-16 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

### § 15.737-17 Motions and requests.

Motions and requests may be filed with the Director or with the Administrative Law Judge.

### § 15.737-18 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director may be represented by an attorney or other employee of the Department.

### § 15.737-19 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the administrative disciplinary proceedings under this part.

(b) *Power of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Assess the responsible party extraordinary costs attributable to the location of a hearing;

(10) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(11) Make initial decisions.

### § 15.737-20 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension of a former officer or employee from practice before the Department. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Public access to hearings.* Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties (such as tax information) is likely to be adduced at the hearing, it will remain closed. A request for an open hearing must be included in the answer to be considered.

(c) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make a decision against the absent party by default.

### § 15.737-21 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension of a former officer or employee from practice before the Department. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 15.737-22 of this part may be admitted.

(c) *Proof of documents.* Official documents, records and papers of the Department shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Department.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

### § 15.737-22 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the Administrative Law Judge, be taken by either the Director or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Department who is authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

### § 15.737-23 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter or from the Department at actual cost of duplication. Where the hearing is stenographically reported by a regular employee of the Department, a copy thereof will be supplied to the respondent either without charge or upon payment of a reasonable fee. Copies of exhibits introducted at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

### § 15.737-24 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

### § 15.737-25 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension from practice before the Department or separate statutory agency thereof or other appropriate disciplinary action, or an order of dismissal of the complaint. The Administrative Law Judge shall file the decision with the Director and shall transmit a copy thereof to the respondent or his/her attorney of record. In the absence of an appeal to the General Counsel or review of the decision upon motion of the General Counsel, the decision of the Administrative Law Judge shall without further proceedings become the decision of the General Counsel 30 days from the date of the Administrative Law Judge's decision.

### § 15.737-26 Appeal to the General Counsel.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the General Counsel. The appeal shall be filed with the Director in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the Director, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director. If the reply brief is filed by the Director, he/she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the Director shall transmit the entire record to the General Counsel.

### § 15.737-27 Decision of the General Counsel.

On appeal from or review of the initial decision of the Administrative Law Judge, the General Counsel will make the agency decision. In making his/her decision, the General Counsel will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the General Counsel's decision shall be transmitted to the respondent by the Director.

### § 15.737-28 Notice of disciplinary action.

(a) Upon the issuance of a final order suspending a former officer or employee from practice before the Department or a separate statutory agency thereof, the Director shall give notice thereof to appropriate officers and employees of the Department. Officers and employees of the Department shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Department or separate statutory agency thereof during the period of suspension.

(b) The Director shall take other appropriate disciplinary action as may be required by the final order.

## Subpart D—Other Departmental Proceedings

### § 15.737-29 Review by the General Counsel.

In my proceeding before the Department, if an initial decision is made with respect to the disqualification of a representative or attorney for a party on the grounds of 18 U.S.C. 207(a), (b) or (c), such decision may be appealed to the General Counsel, who will make the agency decision on the issue.

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# Subtitle B—Regulations Relating to Money and Finance

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**Abbreviation:** The following abbreviation is used in this chapter:
C. P. D.=*Commissioner of the Public Debt.*

# PART 51—FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

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Appendix—Section-by-Section Analysis.

AUTHORITY: State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512), as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488), the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604), and Treasury Department Order No. 224, dated January 26, 1973 (38 FR 3342) as amended by Treasury Department Order No. 242 (Revision No. 1) dated May 17, 1977.

SOURCE: 46 FR 48035, Sept. 30, 1981, unless otherwise noted.

## Subpart A—General Information

### § 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this subpart are prescribed for carrying into effect the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512) applicable to entitlement periods beginning January 1, 1972, and ending December 31, 1976, as amended, by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) applicable to entitlement periods beginning January 1, 1977, and ending September 30, 1980, and the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604) applicable to entitlement periods beginning after October 1, 1980. Subpart A of this part sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes the reporting, public hearing and publication requirements under this part. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlements. Subpart D of this part prescribes prohibitions and restrictions on the use of funds. Subpart E of this part contains the nondiscrimination provisions and procedures applicable to programs funded by recipient governments which receive revenue sharing funds. Subpart F of this part prescribes fiscal procedures and auditing requirements. Subpart G of this part contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part. A reference to individuals in the feminine or masculine gender shall not be construed to exclude either gender.

(b) *Effect on pending cases.* The procedural provisions of the State and Local Fiscal Assistance Act of 1972, as amended by Pub. L. 94-488 and 96-604 and regulations promulgated thereunder, shall apply to all pending administrative proceedings, including cases commenced by complaints filed prior to January 1, 1977.

### § 51.1 Establishment of Office of Revenue Sharing.

There is established, in the Office of the Secretary of the Treasury, the Office of Revenue Sharing. The Office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, Title I, (Pub. L. 92-512) as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) and the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604).

### § 51.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the term is otherwise defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means the State and Local Fiscal Assistance Act of 1972 (Title I of Pub. L. 92-512) approved October 20, 1972, 31 U.S.C. 1221 *et seq.*, as amended by the State and Local Fiscal Assistance Amendments of 1976 (Pub. L. 94-488) approved October 13, 1976, and as amended by the State and Local Fiscal Assistance Act Amendments of 1980 (Pub. L. 96-604) approved December 28, 1980.

(b) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality, the elected county executive of a county, the chairman of a county commission or board in a county that has no elected county executive, the township supervisor, trustee, first selectman, chairman, city manager, or such other official as may be designated pursuant to law by the duly elected governing body of the unit of local government; or the chairman, governor, chief or president (as the case may be) of an Indian tribe or Alaskan native village.

(c) "Department" means the Department of the Treasury.

(d) "Director" means the Director of the Office of Revenue Sharing.

(e) "Entitlement funds" means the amount of revenue sharing payments to which a State government or unit of local government is entitled as determined by the Director pursuant to an allocation formula contained in the Act and as established by regulations under this part, including the interest earned on entitlement funds deposited in financial institutions prior to their use, obligation or appropriation.

(f) "Entitlement period" means one of the following periods of time:

(1) Entitlement Period One is the 6-month period beginning January 1, 1972, and ending June 30, 1972.

(2) Entitlement Period Two is the 6-month period beginning July 1, 1972, and ending December 31, 1972.

(3) Entitlement Period Three is the 6-month period beginning January 1, 1973, and ending June 30, 1973.

(4) Entitlement Period Four is the Federal fiscal year beginning July 1, 1973, and ending June 30, 1974.

(5) Entitlement Period Five is the Federal fiscal year beginning July 1, 1974, and ending June 30, 1975.

(6) Entitlement Period Six is the Federal fiscal year beginning July 1, 1975, and ending June 30, 1976.

(7) Entitlement Period Seven is the 6-month period beginning July 1, 1976, and ending December 31, 1976.

(8) Entitlement Period Eight is the 9-month period beginning January 1, 1977, and ending September 30, 1977.

(9) Entitlement Period Nine is the Federal fiscal year beginning October 1, 1977, and ending September 30, 1978.

(10) Entitlement Period Ten is the Federal fiscal year beginning October 1, 1978, and ending September 30, 1979.

(11) Entitlement Period Eleven is the Federal fiscal year beginning October 1, 1979, and ending September 30, 1980.

(12) Entitlement Period Twelve is the Federal fiscal year beginning October 1, 1980, and ending September 30, 1981.

(13) Entitlement Period Thirteen is the Federal fiscal year beginning October 1, 1981 and ending September 30, 1982.

(14) Entitlement Period Fourteen is the Federal fiscal year beginning October 1, 1982, and ending September 30, 1983.

(g) "Funded" means entitlement funds have been or are being made available for expenditure in or substantially benefited a program or activity of a recipient government or a secondary recipient.

(h) "Governor" means the Governor of any of the 50 State governments or the Mayor of the District of Columbia.

(i) "Indian tribes or Alaskan native villages" means an Indian tribe and Alaskan native village which has a recognized governing body and which performs substantial governmental functions. Certification to the Director by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions, shall constitute *prima facie* evidence of that fact.

(j) "Lobbying" means the personal solicitation of members of a legislative body by representatives of the recipient government or their agents for the purpose of influencing pending or proposed legislation regarding the provisions of the Act.

(k) "Program or activity" means the operations of the agency or organizational unit of a recipient government or the operations or organizational unit of a secondary recipient funded with entitlement funds (examples include, but are not limited to a police department, department of corrections, health department, or a division of a public or private corporation).

(l) "Recipient government" means a State government or unit of local government, the District of Columbia, Indian tribe, Alaskan native village, as defined in this section, or the office of the separate law enforcement officer for any parish in the State of Louisiana, other than the Parish of Orleans, which directly receives entitlement funds, except as otherwise provided.

(m) "Secondary recipient" means:

(1) Any State government, unit of local government, any political subdivision of any State or local government, any public or private agency, institution, organization or other entity which receives entitlement funds, in whole or in part, from a recipient government either:

(i) By a contract or other arrangement pursuant to which such other entity shall conduct, deliver or otherwise participate or assist in the conduct or delivery of a program or activity of the recipient government;

(ii) By a grant or other arrangement with the recipient government intended to provide financial assistance to such other entity under a program or activity.

(2) "Secondary recipient" shall not include a construction contractor or any other private or governmental entity from which a recipient government only acquires real or personal property (e.g supplies, equipment and materials) by such means as purchasing, renting, leasing, or bartering. Secondary recipient also shall not include persons who are the ultimate beneficiaries of a recipient government's programs or activities.

(n) "Secretary" means the Secretary of the Treasury.

(o) "State government" means the government of any of the 50 State governments or the District of Columbia.

(p) "Unit of local government" means the government of a county, municipality, or township, which is a unit of general government as determined by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as a State, shall also be treated as a county area which has no units of local government (other than itself) within its geographic area.

### § 51.3 Procedures for effecting compliance for violations of provisions other than subpart E.

(a) *Investigations.* (1) The Director shall establish procedures to reasonably assure than an investigation of a complaint, relating to possible violation of the provisions of this part (other than Subpart E) is completed and a decision is made as to whether the recipient government is in noncompliance with the Act. The procedures shall provide for the investigation and decision to be made within 180 days of receipt of the complaint.

(2) The scope of the investigation is not necessarily limited to the complaint, but may include any matters covered under the Act either discovered during the investigation or reasonably flowing from the complaint.

(b) *Compliance review or audit.* The Director may periodically conduct audits or reviews of compliance with the provisions of this part (other than Subpart E) based upon receipt of audit reports or other information, which shall be completed within one year after initiation.

(c) *Notice of Noncompliance.* After the completion of an investigation, compliance review or audit, the Director shall decide whether the recipient government has complied with the provisions of the Act. If the decision is that the recipient government has substantially failed to comply with the Act, the Director shall provide the appropriate notice(s) of noncompliance which inform the recipient government of the corrective action necessary to achieve compliance and take appropriate steps to secure compliance.

(d) *Opportunity for hearing.* Whenever a recipient government fails to enter into a compliance agreement after receipt of appropriate notice(s) of noncompliance, the Director shall initiate an administrative hearing and, if appropriate, issue a determination of noncompliance pursuant to the provisions of Subpart G of this part. If a violation is found after such administrative hearing, the administrative law judge shall issue an initial decision that the recipient government is in noncompliance with the provisions of the Act and the Director shall withhold the further payment of entitlement funds, unless corrective action is taken within 60 days of the notification of the determination.

(e) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of Subparts B and F of this part which include submission of reports and assurances and response to specific requests for information concerning possible violation of the Act, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in paragraphs (a) through (d) of this section.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (e)(1) of this section, determine that the payments to the recipient government for a particular entitlement period are constructively waived pursuant to § 51.25(b) of this part. Entitlement payments constructively waived will no longer be available to the recipient government. The constructive waiver shall not be subject to the procedures for effecting compliance set forth in paragraph (a) of this section or in Subpart E of this part.

### § 51.4 Transfer of entitlement funds to secondary recipients.

(a) *Restrictions, prohibitions and requirements applicable to secondary recipients.* The prohibitions, restrictions and requirements set forth in Subparts D, E, and F of this part that are applicable to a recipient government's use and expenditure of entitlement funds are also applicable to the expenditure of entitlement funds transferred to a secondary recipient by the primary recipient government. Any failure by a secondary recipient to comply with any provision of Subparts D, E, and F shall constitute noncompliance with such subparts by the primary recipient government. The Director shall effect compliance by taking appropriate enforcement action against the primary recipient government pursuant to Subpart A, E or G of this part.

(b) *Responsibilities of the primary recipient government for compliance by secondary recipient.* It is the responsibility of the primary recipient government to inform the secondary recipient of the requirements of this part and monitor its compliance. If the secondary recipient fails or refuses to comply with the restrictions and prohibitions or requirements applicable to the expenditure of entitlement funds, the primary recipient government responsible for achieving compliance may be required to withdraw funding in order to achieve compliance.

### § 51.5 Effect of State or local law.

Any State or local law, ordinance or regulation that substantially impedes compliance by a recipient government with the provisions of this part, shall be inoperative to the extent necessary to achieve such compliance or remedy.

### § 51.6 Applicability of other Federal laws.

Except as otherwise provided in the Act or this part, entitlement funds are not subject to Federal civil laws applicable only to Federally assisted programs or to Federal grants, loans or contracts. The Criminal Code of the United States (Title 18, U.S.C.) shall be applicable to all criminal offenses relating to the expenditure, accounting or reporting of entitlement funds by a recipient government or secondary recipient of such funds under the Act or this part.

## Subpart B—Assurances, Reports, and Public Participation

### § 51.10 Definitions.

As used in this subpart (except where the context clearly indicates otherwise) the following definitions shall apply:

(a) "Budget" means a plan for the overall allocation of funds, including entitlement funds, by a recipient government to various purposes during a specified fiscal period in accordance with its State and local law and procedure. A recipient government that does not formally adopt or enact such a plan, shall be deemed to have adopted or enacted a budget for purposes of this subpart when it has adopted or enacted a resolution, ordinance, or appropriation act, or taken other action dedicating, setting aside, or otherwise designating entitlement funds for a particular purpose or use.

(b) "Budget summary" means categories of expenditures for entitlement funds and general funds classified by major function and activity in accordance with the recipient government's State or local laws and procedures. Where there is no State or local law or procedure prescribing the expenditure classifications, the recipient government shall use the classifications of the Bureau of the Census.

(c) "Enacted" means, in the budget context, the act of final adoption, ratification, confirmation or other action with respect to an approved budget that makes the budget the official expenditure authorization of the recipient government. Where a State board or agency has statutory authority to review or approve the budget of a unit of local government, enacted means the final action of the unit of local government.

(d) "Entitlement funds" means the amount of revenue sharing payments to which a State government or unit of local government is entitled as determined by the Director pursuant to an allocation formula contained in the Act and as established by regulations under this part, including the interest earned on entitlement funds deposited in financial institutions prior to their use, obligation or appropriation.

(e) "Executive authority" means the chief executive officer or other elected or appointed official of the recipient government whose statutory responsibility is to assemble budget data and prepare the budget document for presentation to the legislative body for enactment or approval.

(f) "Fiscal year" means the 12-month period or other fiscal period on the basis of which the recipient government operates.

(g) "Impractical" means, with respect to the publication requirement, that a newspaper of general circulation is available to the citizens of a recipient government but is not generally subscribed to or read within the community.

(h) "Infeasible" means, with respect to the publication requirement, that a newspaper of general circulation is not available or does not serve the citizens of a recipient government.

(i) "Legislative body" means the elected officials of the recipient government who have the primary legal responsibility for enacting the budget. A quorum or the minimum number of legislative officials needed to legally transact business, as determined by State and local law shall constitute the legislative body.

(j) "Presented" means, in the budget context, the submission of a proposed budget to the legislative body having primary legal responsibility for enacting the budget of a recipient government.

(k) "Public hearing" means an open public meeting called by a recipient government to provide all residents (without regard to taxpaying voting status or handicap) with an opportunity to offer written and oral comments regarding the subject to be discussed. A public hearing required under this subpart may be held concurrently with other meetings held by the recipient government for public purposes (such as town meetings, budget sessions and other regular meetings), provided that the recipient government complies with the public notice requirements of this subpart.

(l) "Publication" means giving notice or advising the public, and making information known to the citizens of the recipient government.

(m) "Use report" means a report required by the Director from each recipient government showing the amounts and purposes for which entitlement funds have been used in relation to the relevant functional items in the recipient government's budget.

### § 51.11 Reports to the Director; assurances: procedure for effecting compliance.

(a) *In general.* The Director may require each recipient government to submit such annual and interim reports as may be necessary to provide a basis for evaluation and review of compliance with, and effectiveness of, the provisions of the Act and regulations of this part. Such reports requested by the Director shall include the documentation necessary to support the statements contained therein.

(b) *Retention of documentation concerning public participation requirements.* Documentation establishing compliance with the assurance, reporting and public hearings requirements of this subpart, e.g., the publication of notices, and supplementary information and the availability of required information for public inspection, shall be retained for at least one year and made available to the Director upon request.

(c) *Requisite assurances for receipt of entitlement funds.* In order to qualify for entitlement funds for an entitlement period, the chief executive officer of each recipient government, when requested by the Director, shall file a Statement of Assurances on a form to be provided. The Statement of Assurances will state the recipient government's intention to comply with specified requirements, prohibitions and restrictions of the Act and of Subparts B, D, E, and F of this part, with respect to the use of entitlement funds. The Director will afford the Governor of each State an opportunity for review and comment to the Office of Revenue Sharing on the adequacy of the assurance by units of local government, other than Indian tribes and Alaskan native villages, located in that State.

(d) *Procedure for effecting compliance.* (1) If a recipient government fails to comply with the public participation requirements of this subpart, the Director shall apply the procedures for effecting compliance set forth in §§ 51.3 (a) through (d) of Subpart A and hearing procedures of Subpart G of this part.

(2) If the recipient government fails to comply with the assurance and reporting requirements of this part, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

### § 51.12 Use reports.

(a) *In general.* Each recipient government shall submit a report to the Director (or to the Bureau of the Census or other agency that the Director may designate) setting forth the amounts and purposes for which entitlement funds have been appropriated, spent or obligated during its fiscal year. Such report shall also show the relationship of the entitlement funds to the relevant functional items in the recipient government's budget and shall identify differences between the actual use of entitlement funds and the use of such funds as planned in the enacted budget. The report shall be filed on the form prescribed and approved by the Director and shall be submitted within the requested time period. Failure to file the report as prescribed by the Director may jeopardize future entitlement payments pursuant to § 51.3(e).

(b) *Public inspection.* A copy of the use report and documentation necessary to support the statements contained therein shall be made available to any person for a period of three years. Within 10 days after the use report is filed, this information shall be placed at the principal office of the recipient government for public inspection during normal business hours. Where feasible, local public libraries and other public buildings should be used also. If the recipient government has no principal office, the report and supporting documentation shall be made available for public inspection at a public place or places within the political boundaries of the recipient government to satisfy the requirements of this paragraph.

(c) *Notice of availability of use reports.* The recipient government shall publish a notice which indicates that the actual use report is available for public inspection within 10 days of the filing of the report with the Director or other designated agency. Such notice shall specify the location(s) and hours during which the report and its supporting documentation are available to the public. Publication of the notice shall be made in a newspaper of general circulation serving the recipient government's geographic area. Where newspaper publication is impractical or infeasible, alternative methods of publication shall be used as provided in § 51.13(c)(2).

(d) *Submission of use reports to Governor.* The Director (or such agency as the Director may designate) shall furnish the reports required under paragraph (a) of this section, except those reports relating to Indian tribes and Alaskan native villages, to the Governor of the State in which a recipient government is located, in the manner and form prescribed by the Director.

### § 51.13 Proposed use hearing.

(a) *In general.* Each recipient government which expends entitlement funds in any fiscal year, pursuant to each budget enacted on or after January 1, 1977, shall, prior to such enactment, have at least one public hearing on the possible uses of such funds. Subsequently, the recipient government shall have at least one public hearing on the budget as proposed by the executive authority as described in § 51.14. At the proposed use hearing, all citizens of the recipient government shall have the opportunity to provide the executive authority with written and/or oral comments and suggestions as to the possible uses of entitlement funds. The proposed use hearing shall be conducted not less than seven calendar days before the proposed budget is presented to the legislative body for enactment.

(b) *Public notice*—(1) *Publication of notice.* Notice of the proposed use hearing shall be published in at least one newspaper of general circulation serving the recipient government's geographic area, no later than 10 days prior to the scheduled date of the hearing.

(2) *Contents of notice.* The notice shall include the date, place, and time of the hearing, the amount of unappropriated entitlement funds in the recipient government's revenue sharing trust fund, and the amount of entitlement funds which the recipient government expects to receive during its fiscal year. In addition, the notice shall specify that citizens attending the public hearing shall have the right to provide written and oral comments and suggestions as to the possible uses of entitlement funds.

(c) *Waiver of proposed use hearing and notice requirements; alternative method of publication*—(1) *Waiver of hearing requirement due to cost.* The Director, upon written application by the chief executive officer of a recipient government, may grant a waiver of the proposed use hearing requirements for one or more entitlement periods, if it can be determined from the facts submitted that the unavoidable expenses associated with holding the proposed use hearing would exceed fifteen (15) percent of the recipient government's entitlement received during the applicable entitlement period. An itemized cost estimate, which specifically describes the unavoidable expenses, must accompany the waiver application. For purposes of this paragraph, "unavoidable expenses" are those incurred in holding the public hearing, such as space, furniture and equipment rentals, overtime compensation, and similar direct costs including the costs of publication of the public notice verified by a newspaper. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(2) *Waiver of publication requirement.* The newspaper publication re-

quirements for the notice of the proposed use hearing may be waived by the Director upon written application by the chief executive officer of the recipient government. The application shall indicate the circumstances making newspaper publication impractical or infeasible, and provide for an alternative method of notification which informs citizens of the recipient government of the date, place, time, and subject of the public hearing. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(3) *Waiver of proposed use hearing and publication requirements where hearing is based upon projections.* A recipient government shall not be required to conduct an additional hearing under paragraph (a) of this section concerning entitlement funds appropriated for entitlement period twelve where:

(i) The hearing was held prior to December 28, 1980, and,

(ii) The recipient government used reasonable projections as to the amounts of entitlement funds to be received during entitlement period twelve to determine the amount of entitlement funds subject to the budget process.

### § 51.14 Budget hearing.

(a) *Budget hearing requirement.*—(1) *In general.* Each recipient government which expends entitlement funds in any fiscal year pursuant to a budget enacted on or after January 1, 1977 shall, after the proposed use hearing, have at least one public hearing on the government's proposed uses of entitlement funds in relation to its entire budget (i.e., the general revenues and all other funds proposed for appropriation during the fiscal period). The budget hearing shall be conducted by the legislative body, or the appropriate committee thereof, prior to enactment of the budget. The number of representatives of the legislative body required to be present at the hearing is the same as that required for a budget hearing under State or local law. All citizens of the recipient government shall have a reasonable opportunity to provide written and oral comments, and to ask questions concerning the entire budget and the relationship of entitlement funds to the entire budget. The budget hearing required by this paragraph shall be held at a date, place, and time and in a manner that permits and encourages public attendance and participation by all citizens.

(2) *Recipient government with bicameral legislature.* For those recipient governments which have a bicameral legislature, the hearing shall be held before the appropriate committee in each house of the legislature, or before an appropriate joint committee of both houses of the legislature.

(b) *Alternative procedures for budget hearing.* A recipient government may use an alternative budget hearing process without obtaining prior approval from the Director if it complies with the public notice requirements contained in paragraph (c) of this section and if:

(1) The recipient government, pursuant to State or local law, governing the expenditure of its own revenues, is required to follow a budget procedure which requires a public hearing that provides all citizens the opportunity to provide oral and written comments and ask questions concerning the proposed use of all revenues to be budgeted by the recipient government, including the use of entitlement funds and their relationship to the entire budget; and

(2) Documentation that the recipient government's alternative budget hearing procedures comply with State or local law shall be made available for public inspection during normal business hours at the principal office of the recipient government and submitted to the Director upon request;

(c) *Public notice and inspection.* (1) Notice of the budget hearing shall be published in a newspaper of general circulation serving the recipient government's geographic area no later than 10 days prior to the scheduled date of the hearing. The notice shall specify the date, place, and time of the public hearing, and that all citizens attending the hearing have the right to provide written and oral comments and ask questions concerning the entire budget and the relationship of entitlement funds to the entire budget. The notice shall state how, in the context of its proposed budget, the recipient government intends to use its entitlement funds, and shall require a budget summary of its entire proposed budget. In addition, the notice shall advise when and where the above information, together with a copy of the entire proposed budget, shall be made available for public inspection.

(2) At least 10 days prior to the revenue sharing budget hearing a recipient government shall make available for public inspection during normal business hours, at the principal office of such government, a statement of the government's proposed uses of entitlement funds in the context of its proposed budget, a summary of the entire proposed budget, which describes the uses proposed for entitlement funds, general revenues and other funds, and a copy of its entire proposed budget. If a recipient government has no principal office, then making the above materials available at a public place within the political boundaries of the recipient government shall satisfy the requirements of this paragraph. Where feasible, local public libraries and other public buildings should be used for the purpose of providing additional places for public inspection of these materials.

(d) *Modification of time limitation for public notice and inspection.* Whenever State or local law provides for a specified time period within which a recipient government is required to publish notice of a budget hearing or to permit public inspection of its proposed budget for a specified time period, the recipient government shall comply with the time period for publication or public inspection required by its State or local law, provided that it is not less than three (3) working days.

(e) *Waiver of newspaper publication; alternative forms.* (1) The requirement, that notice of the budget hearing and the summary of the proposed budget be published in a newspaper, may be waived by the Director upon receipt of a written request by the chief executive officer of the recipient government. The request shall include an itemized cost estimate verified by a newspaper, which shows how the cost of publication will exceed fifteen (15) percent of the amount of entitlement funds included in the proposed budget. In addition, the request shall propose an alternative method of publication which provides the citizens of the jurisdiction with adequate notice of the budget hearing and the opportunity to review the budget summary. Any alternative method of publication shall meet the time requirements and include the information required by this section.

(2) When newspaper publication of the notice of the budget hearing and the budget summary is impractical or infeasible, the Director may waive the newspaper publication requirement upon receipt of a written request by the chief executive officer of the recipient government. The request shall indicate the circumstances which make publication in a newspaper impractical or infeasible and shall propose an alternative method of publication. The waiver must be requested and approved before the proposed appropriation of entitlement funds occurs.

(f) *Waiver of budget hearing and publication requirements where hearing is based upon projection.* A recipient government shall not be required to conduct an additional hearing under paragraph (a) of this section concerning entitlement funds appropriated for entitlement period twelve where:

(1) The hearing was held prior to December 28, 1980, and

(2) The recipient government used reasonable projections as to the amounts of entitlement funds to be received during entitlement period twelve to determine the amount of entitlement funds subject to the budget process.

(g) *Summary of enacted budget.* Within 30 days after enactment of a budget as provided by State or local law, a summary of the enacted budget showing the intended uses of entitlement funds and information necessary to support the information and data in the summary shall be made available for public inspection during normal business hours at the principal office of the recipient government. If a recipient government has no principal office, the summary of the enacted budget and the enacted budget document shall be made available for public inspection at a public place within the political boundaries of the recipient government to satisfy the requirements of this paragraph. Where feasible, local public libraries and other public buildings should be used for the purpose of providing additional places at which the public may inspect the budget summary and the enacted budget.

(h) *Published notice of availability of summary of enacted budget.* Public notice shall be published in a newspaper of general circulation serving the geographic area of the recipient government within 30 days after enactment of the budget. The notice shall state where the when the summary of the enacted budget is available for public inspection. Where newspaper publication is impractical or infeasible alternative methods of publication shall be used as provided in § 51.13(c)(2).

### § 51.15 Amendments or modification to enacted budget.

(a) *Amendments or modification pursuant to State or local law.* Where applicable State or local law exists which governs amendments or modification of existing budgets, and requires public notice, at least one public hearing, and the availability of the amendments or modifications for public inspection, the recipient government shall comply with the State or local law when making a major change to an enacted budget.

(b) *Amendment or modification in absence of State or local law.* In the absence of applicable State or local law, the provisions of § 51.14 shall apply to any amendment, modification or revision of an enacted budget when a major change is proposed.

(c) *Major change defined.* For the purposes of this section, a major change is any change in the enacted budget which, on a cumulative basis, affects the use of more than $2,000 of entitlement funds and affects 25% or more of the entitlement funds as originally enacted in the budget of the recipient government. An amendment or modification that does not meet both criteria shall not be considered a major change.

### § 51.16 Participation by senior citizens.

A recipient government shall endeavor to provide senior citizens, and organizations representing the interests of senior citizens, with an opportunity to be heard and present their views regarding the use of entitlement funds, in any hearing or proceeding required under this subpart or under its own budget processes, prior to final allocation of such funds.

### § 51.17 Notification of news media.

Each recipient government shall advise the news media, including minority, bilingual and foreign language news media, serving its geographic area and shall provide the news media with copies of reports, notice, or budget information on request, at the same time that any public report, notice of hearing or budget information is required to be published in a newspaper under this subpart.

### § 51.18 Legal notice rules not applicable.

Whenever any section of this subpart requires the newspaper publication of a report, public notice, budget summary, or any other required information, the recipient government may publish the required information in a newspaper of general circulation serving its geographic area without regard to State or local statutory requirements for the publication of legal notices. Prominently displayed advertisements or news articles may be used to provide newspaper notice required by this subpart. Such article or advertisement must contain all of the required information.

### § 51.19 Reports to the Bureau of the Census.

It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Director) for data, information and reports relevant to the determination of entitlement allocations or use of entitlement funds. Failure of any recipient government to comply may place in jeopardy its receipt of entitlement funds.

## Subpart C—Computation and Adjustment of Entitlement Funds

### § 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments to allocations, payable under this part, will be the latest and most complete data supplied by the Bureau of the Census, the Bureau of Indian Affairs, the Bureau of Economic Analysis and the Internal Revenue Service which are available prior to the allocations for an entitlement period unless, in the judgment of the Director, the data provided by those agencies are not current enough or are not comprehensive enough to provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available to permit an equitable allocation.

(2) Payment to units of local government for which the Director has not received an address confirmation will be delayed until proper information is available to the Director.

(3) Where the Director determines that the data provided by the agencies listed in paragraph (a) of this section are not sufficiently current or comprehensive enough to provide for equitable allocations, the Director may authorize the use of other data, including estimates. The Director's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the FEDERAL REGISTER.

(4) *Currency of tax collection.* Only that tax collection data, which is received in the most recent reporting year available from the appropriate agencies prior to the allocation for an entitlement period, shall be used in the determination of entitlements for that entitlement period, except as provided in § 51.21.

(c) *Special rule for less than one year entitlement periods.* For entitlement periods which encompass less than one year, the adjusted taxes and intergovernmental transfers of any unit of local government for the entire reporting year will be used. The limitation that the amount allocated to a recipient government shall not exceed 50% of the sum of the recipient government's adjusted taxes and intergovernmental transfers of revenues shall be reduced proportionately for entitlement periods which are less than one year.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county in one or more States, each part of that unit in each county is treated for allocation purposes as a separate unit of local government, and the adjusted taxes and intergovernmental transfers of such parts are estimated on the basis of the ratio which the population of that part bears to the entire population of the local government. Parts of a unit with population below 100, however, need not be treated for allocation purposes as a separate unit of local government.

### § 51.21 Data affected by major disaster.

(a) *In general.* Any change in data otherwise eligible for use in determining the entitlement of a recipient government after April 1, 1974, shall be disregarded for a period of 60 months if that change:

(1) Resulted from a major disaster as determined by the President under section 301 of the Disaster Relief Act of 1974 (Section 414 of Pub. L. 93-288); and

(2) Results in a data factor which is less beneficial to the recipient government than the pre-disaster data factor for purposes of the revenue sharing allocation process.

(b) *Pre-disaster data factor.* For the purposes of this section, a pre-disaster data factor is defined as a data factor of record for the final revenue sharing allocation which was calculated for a time period immediately preceding the data factor time period in which the disaster occurred and, therefore, could not have been affected by the disaster.

(c) *Eligibility requirements.* To be eligible for the data stabilization benefits of paragraph (a) of this section, a recipient government shall be:

(1) Located within a State designated by the President as a major disaster area; and

(2) Located within a geographical subdivision of the State certified to the Office of Revenue Sharing as a major disaster area by the Administrator of the Federal Emergency Management Agency;

(3) Each recipient government within the specific geographic area so designated will be notified, pursuant to the data improvement program provided for in § 51.29, of each of its data factors developed subsequent to the major disaster designation, which are less beneficial than the pre-disaster data factors. The chief executive officer of the recipient government must verify that the data was adversely affected by the major disaster. In addition, the Director may require that the verifications be accompanied by substantiating documentation which establishes the causal relationship between the major disaster and the current beneficial revenue sharing data factor of record. The Director, upon being satisfied that all of the requirements of this section have been met with respect to any post-disaster data factor, shall refrain from using the post-disaster data factor in the allocation process of an entitlement period, and shall continue to use the pre-disaster data factor in the allocation process for each entitlement period that begins during the 60-month period after the President's designation of the specific major disaster area unless:

(i) A data factor for a current entitlement period is more beneficial than the pre-disaster data factor; or

(ii) A post-disaster data factor of an entitlement period is not verified by the chief executive officer as having been adversely affected by the major disaster;

(iii) The Director determines that the data used for revenue sharing allocations in a State has been significantly affected by other causes subsequent to the disaster declaration by the President. In such cases, the Director will determine the entitlement of a recipient government affected by a major disaster by using current data of record, reasonably adjusted to account only for the effects of the disaster.

(d) *Multiple disasters.* Recipient governments may be in areas designated by the President as specific major disaster areas as the result of two or more disasters. Recipient governments in such areas will also be provided their appropriate pre-disaster data for vertification. The 60-month period for which more beneficial pre-disaster data may be used for a government shall be determined by the most recent designation by the President of a specific major disaster area containing that government.

(e) *Effect on later entitlement periods of failure to verify.* A recipient government which does not verify that an adverse data change is caused by a disaster in an entitlement period when it was afforded an opportunity to do so does not lose the opportunity to verify in a later entitlement period that a disaster has affected the data factor for that later entitlement period.

(f) *Per capita income data.* Increases in per capita income data subsequent to disasters in designated disaster areas will not be considered adverse data changes resulting from a disaster for purposes of section 145 of the Act.

(g) *60-month period.* The post-disaster data factor shall be used for the first entitlement period beginning after the end of the 60 months referred to in § 51.21(a).

### § 51.22 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of the compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, this amount will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in the fund shall be calculated, and that ratio, multiplied by the expenditure of transfer of non-dedicated moneys from the fund to the school fund, shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in the fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all non-dedicated revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b) (1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Director shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data.* Allocation of funds under the Act will be based on data reported by States and units of local government to the Bureau of the Census and shall be in accordance with definitions established by the Bureau. No State or unit of local government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

### § 51.23 Dates for finalizing data.

(a) *Data definitions.* Pursuant to the provisions of § 51.20 (a) and (b)(3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period are to be calculated shall be made no later than the day immediately preceding the beginning of the entitlement period. The final data definitions published in the FEDERAL REGISTER, prior to each entitlement period, shall not be subject to change.

(b) *Memphis Rule.* Any change in the computation of local tax effort to credit county sales taxes to units of local government pursuant to section 109(e)(2)(B) of the Act (the "Memphis Rule") will be considered to be a change in a data definition and will not be given effect for any entitlement periods for which there are final data definitions.

(c) *Initial allocation.* The date upon which initial allocations for an entitlement period are calculated for payment purposes shall be determined by the Director as soon as practicable and shall be publicized by notice in the FEDERAL REGISTER.

(d) *Adjusted taxes and intergovernmental transfers.* The date for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year that can be uniformly assembled for all units of local government prior to the beginning of the affected entitlement period.

### § 51.24 Boundary changes, governmental reorganization, etc.

(a) *In general.* A boundary change, governmental reorganization, or change in State statutes or constitution, relevant to the computation of entitlement of a unit of local government under the Act, which occurs during an entitlement period shall not result in a change to the entitlement of that government until the next entitlement period. However, payment(s) tendered to such government for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence as an active government during an entitlement period shall first be eligible for an allocation for the next entitlement period. A new unit of local government must establish its eligibility for an entitlement period within one year after the end of that period by providing documentation of its boundaries, State certification and its activation date to the ORS or the Bureau of the Census. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period: *Provided,* That such unit of local government is in the process of winding down its governmental affairs or a successor unit of local government has the legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Director because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist. An entitlement payment not used by a dissolved unit of local government or its successor government or governments shall be added to and shall become a part of the entitlement of the next higher eligible unit of government in that State. If that government cannot receive the entitlement funds, they shall be added to the appropriate State reserve.

(d) *Limitations on adjustment for annexations.* Annexations by units of local government shall not affect the entitlement of any unit of local government for an entitlement period, unless the Director determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall, before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that the change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and the certification shall be submitted to the Bureau of the Census.

### § 51.25 Waiver of entitlement; nondelivery of checks; insufficient data.

(a) *Waiver.* Any unit of local government or Indian tribe or Alaskan native village may waive its entitlement for any entitlement period: *Provided,* That the chief executive officer, with the consent of the governing body of the government, notifies the Director that the entitlement payments for a past, current, or next beginning entitlement period, or any combination thereof, are being waived. A wavier of entitlement for the next beginning entitlement period will only be given effect if the waiver notice is received during the 6-month period immediately preceding that entitlement period. In the event that an entitlement payment is returned or a notice of waiver is executed which is not in accordance with this procedure, the chief executive officer will be notified by the Director and, unless the attempted waiver is rescinded within 30 days of the notice, it shall be given effect. However, in no event will a notice of waiver be given effect for an entitlement period which follows the next beginning entitlement period. The entitlement waived, and any adjustments resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next higher unit of government eligible to receive entitlement funds in that State in which the unit of local government, Indian tribe or Alaskan native village waiving the entitlement is located. If that government cannot receive the entitlement funds, they shall be added to the appropriate State reserve. A waiver of entitlement by a unit of local government, Indian tribe or Alaskan native village shall be deemed irrevocable 30 days prior to the first payment for the entitlement period to which it relates.

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to submit reports or assurances required pursuant to Subparts B, E or F, of this part is subject to having the Director constructively waive one or more of its entitlement payments for the applicable entitlement period. Prior to such a waiver, the Director shall, in two separate notices of not less than 30 days each, notify nonresponsive recipient governments of their noncompliance and that their entitlement payment(s) for the affected entitlement period(s) are being temporarily withheld pursuant to §§ 51.3(c) and 51.60(c). If compliance is not achieved by the end of each affected entitlement period, or a reasonable period thereafter as determined by the Director, the Director shall make a determination that the payments to the nonresponsive recipient governments will or are continued to be constructively waived. Entitlement funds constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

(c) *Nondelivery.* Entitlement payments for any entitlement period which are returned to the Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(d) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

### § 51.26 Reservation of funds and adjustment of entitlement.

(a) *Reservation of entitlement funds.* In order to make subsequent adjustments to an entitlement payment under this part which may be necessitated because of insufficient or erroneous data, or for any other reason, the Director shall reserve in the State and Local Government Fiscal Assistance Trust Fund such percentage, not to exceed 0.5 percent, of the total entitlement funds for each State government and all units of local government within the State for any entitlement period as are necessary to ensure that there will be sufficient funds available to pay adjustments due after the final allocations of funds. The reserves shall be known as State Obligated Adjustment Reserves and amounts remaining in the reserves will accumulate until the liabilities of the Trust Fund to the recipient governments in each State are discharged or sufficiently diminished to permit an allocation.

(b) *Adjustments to entitlement payments.* Adjustments to the entitlement of a recipient government during an entitlement period will ordinarily be effected through alteration to entitlement payments for the next entitlement period, unless the following circumstances exist:

(1) There is a downward adjustment which is so substantial as to make payment alterations impracticable or impossible. In such case, the Director may demand that the remaining entitlement funds received by the recipient government in excess of its entitlement be immediately repaid to the State and Local Government Fiscal Assistance Trust Fund.

(2) There is a positive adjustment which is so substantial as to make an interim payment adjustment necessary to avoid an inequitable delay in providing a government with its entitlement. In such case, the Director may authorize an interim adjustment for such government provided there are sufficient funds in the appropriate State reserve to permit an early allocation and payment.

(3) For entitlement periods which begin on or after January 1, 1977, any

adjustments to increase or decrease entitlement payments of a recipient government for a particular entitlement period shall be made only if demand therefor has been made by the recipient government, or the Director, prior to the expiration of one year from the end of the entitlement period for which the adjustment is claimed.

(4) For entitlement periods which begin on or after January 1, 1977, any adjustments to increase or decrease entitlement payments of a recipient government for a particular entitlement period shall be made through the State Obligated Adjustment Reserve.

(5) Adjustments made to decrease payments to a recipient government for an entitlement period ending before January 1, 1977 shall be withheld from the appropriate State Obligated Adjustment Reserve established under paragraph (a) of this section.

### § 51.27 State to maintain transfers to local governments.

(a) *General rule for entitlement periods commencing on or after January 1, 1977.* The payment of revenue sharing funds to any State government for any entitlement period beginning on or after January 1, 1977, for which entitlement funds were appropriate for State governments, shall be reduced by the amount (if any) by which—

(1) One-half of the aggregate amounts transferred by the State government out of its own sources during the 24-month period ending the last day of the last fiscal year for which the Bureau of the Census has relevant data on the first day of such entitlement period, to all units of local government in such State is less than—

(2) One-half the similar aggregate amount for the 24-month period ending the day before the 24-month period described in paragraph (a)(1) of this section.

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State (out of its own sources) government in such State. The phrase "own sources" means all sources of State revenue (including debt proceeds and State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal government.

(b) *Measurement of maintenance of effort.* The following formula will be applied by the Director to establish the base year intergovernmental transfers to units of local government from the State's own sources and to generally monitor the level of effort in accordance with the maintenance provisions of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovernmental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be assumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b)(2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b)(1) of this section.

(4) If the application of this formula during any entitlement period indicates that a State government has not maintained its intergovernmental transfer effort, i.e., should a State's intergovernmental transfers to units of local government, for a particular period, be less than transfers calculated for the base period, the difference (as defined in paragraph (b)(3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Director that the fact or amount of nonmaintenance, as determined by application of the formula, is inaccurate.

(c) *Alternative procedure.* If the Director determines that the application of the formula set forth in paragraph (a) of this section in a particular case provides an inaccurate or unfair measurement of transfer effort, then any formula, procedure, or method deemed equitable by the Director may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Director that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts, which for the period used for the purposes of this paragraph, it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Director that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a)(2) shall be reduced to the extent of the larger of—

(1) The amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(2) The amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments. No amount shall be taken into consideration under paragraph (e)(1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Director to have decreased a related State tax.

(f) *Adjustment where Federal government assumes responsibility for category of expenditures.* If in an entitlement period beginning on or after January 1, 1977, a State government establishes to the satisfaction of the Director that the Federal government has assumed responsibility for a category of expenditures for which such State government transferred amounts, during all or a part of the period utilized for purposes of paragraph (a)(1) of this section, which (but for this paragraph) would be included in the aggregate amount taken into account under paragraph (a)(2) of this section, the aggregate amount shall be reduced to the extent that increased Federal government spending has replaced corresponding amounts which such State government had transferred to units of local government.

(g) *Computation by the Office of Revenue Sharing.* The Director shall make the computation required for the determination of maintenance of effort, based on data furnished by the

Bureau of the Census. The Bureau of the Census shall provide to the Office of Revenue Sharing the following data pertaining to a State's transfer of funds to units of local government for the State's appropriate fiscal year:

(1) The State's own source funds.

(2) The State's total funds.

(3) The State's own source transfers to units of local government.

(4) The State's total transfers to units of local government.

(h) *Reduction in entitlement.* If the Director has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, the Director shall give reasonable notice and opportunity for hearing to the State. If, after a hearing it is determined that a reduction is required, the Director shall determine the amount of the reduction, notify the Governor of the affected State of the determinations and withhold from subsequent payments to such State government under this part an amount equal to the reduction.

(i) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this section shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

### § 51.28 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of entitlement funds among the county areas, or among units of local government (other than county governments, Indian tribes, and Alaskan native villages):

(1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local government; or,

(2) On the basis of the population multiplied by the relative income factors of such areas or units of local government; or,

(3) On the basis of a combination of those two factors;

(4) Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a), 108(b) (2) and (3) or 108(c) of the Act, shall notify the Director of the new law no later than 90 days before the beginning of the first entitlement period to which it is to apply. Any such law shall:

(i) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b) (2) and (3) of the Act;

(ii) Apply uniformly throughout the State; and

(iii) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on September 30, 1983.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local government allocation formula, or both, such alteration may be made only once and is required to be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Director certifies that the State law complies with the requirements of the paragraph. The Director shall not certify any such law with respect to which notification is received later than 30 days prior to the initial entitlement period during which it is to apply.

### § 51.29 Notification and adjustment of data factors.

(a) *Notification of data factors.* The data factors used in computing allocations of entitlement funds under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to question its data factors by providing factual documentation which demonstrates evidence of error in the data as defined in § 51.23(a) for that entitlement period, no later than one year from the end of the entitlement period for which the data are applicable.

(b) *Time limit for data changes.* If it is established to the satisfaction of the Director by factual evidence and documentation that the data used in the computation of an allocation are erroneous, an adjustment will be made to the entitlement payment of such government. No adjustment shall be made unless evidence and documentation of the error in the data as defined for that entitlement period, is provided the Director for determination within one year of the end of the entitlement period with respect to which the payment is made. No adjustment of any kind, which is less than $200, shall be made to an entitlement if in the judgment of the Director such adjustment will be burdensome, expensive, or otherwise impracticable.

### § 51.30 Adjustment to entitlements; application of adjustments.

(a) *County area maximum and minimum per capital entitlement.* (1) *In general.* Pursuant to Section 108(b)(6) of the Act, the per capita amount allocated to any county area shall be not less than 20 percent, nor more than 145 percent, of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five percent.* If a county area allocation is greater than the 145-percent limit, its allocation shall be reduced to the 145-percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty-percent rule.* If, after the application of paragraph (a)(2) of this section, a county area allocation is less than the 20-percent limit, its allocation shall be increased to the 20-percent level and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local governments (other than a county government, Indian tribe or Alaskan native village)*—(1) *In general.* Except as provided below, the per capita amount allocated to any unit of local government (other than a county government, Indian tribe or Alaskan native village) shall be not less than 20 percent, nor more than 145 percent, of the amount allocated to the State under Section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five percent rule.* If a unit of local government is allocated an amount greater than the 145-percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated, an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20-percent limit or 50 percent of the sum of that local government's adjusted taxes and transfers and intergovernmental transfers of revenue (other than entitlement funds).

(4) *Entitlement less than $200.* If a unit of local government below the level of a county government is allocated an amount less than $200 for an entitlement period, the amount of the entitlement of that local government for that entitlement period shall become a part of the entitlement of the county government of the county area in which the local government is located.

(c) *Fifty percent limitation.*—(1) *In general.* The amount of entitlement funds allocated to any unit of local government other than an Indian tribe or Alaskan native village under this section for any 12-month entitlement period shall not exceed 50 percent of the sum of that local government's adjusted taxes, plus its intergovernmental transfers of revenue (other than entitlement funds).

(2) *Reallocation of excess amounts due to the fifty percent limitation.* In any case in which the amount of entitlement funds allocated to a unit of local government other than a county government is reduced pursuant to paragraph (c)(1) of this section, the amount of the reduction of funds shall be reallocated as follows—

(i) The amount shall be added to the county government in which the local government is located, to the extent that the county government may receive funds after application of the provisions of paragraphs (a) and (c) of this section.

(ii) If the county government cannot receive such funds, the provisions of paragraphs (d) and (e) of this section shall be applied.

(d) *One hundred-percent criterion.* If the amounts allocated to units of local government within a State do not total 100 percent of the amount allocated to that State, due to application to the adjustments set forth in paragraphs (a), (b) and (c) of this section, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to such units of local government total 100 percent of the amount allocated to that State to the extent possible.

(e) *Distribution of funds in excess entitlement funds resulting from adjustments.* Funds which may not be distributed after application of paragraph (d) of this section shall be added on a pro rata basis to all units for local government within the State.

### § 51.31 Separate law enforcement officers.

(a) *Entitlement of separate law enforcement officers.* (1) The office of the separate law enforcement officer within any parish area in the State of Louisiana, other than the parishes of East Baton Rouge and Orleans, shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, 15 percent of the entitlement of the government of the Parish government, unless entitlement funds are not appropriated to State governments in which case the Office shall receive 13.5 percent of the entitlement.

(2) The office of the separate law enforcement officer within the area of the government of the parish of East Baton Rouge, shall be entitled to receive for each entitlement period, beginning on or after January 1, 1977, 7.5 percent of the entitlements of the governments of Baton Rouge, Baker and Zachary, Louisiana for each such entitlement period, unless entitlement funds are not appropriated to State governments in which case the Office shall receive 6.75 percent of the entitlement.

(b) *Reduction of entitlement of parish government.* (1) The governments of each parish (other than East Baton Rouge and Orleans, Louisiana) shall receive for an entitlement period, entitlements reduced by one-half of the amount due the separate law enforcement officer for such parish, except that after October 1, 1981, the parish government entitlement shall be reduced by the full amount of entitlement funds are not appropriated to the State governments.

(2) The governments of Baton Rouge, Baker and Zachary, Louisiana shall receive, for an entitlement period, entitlements reduced by an amount equal to 3.75 percent of such government's normal entitlement, unless entitlement funds are not appropriated to State governments in which case the entitlements for the governments of Baton Rouge, Baker and Zachary shall be reduced by 6.75 percent.

(c) *Reduction of entitlement of State government.* The State government of Louisiana shall receive for an entitlement period an entitlement reduced by the same amount as the reduction to entitlements of the parishes and governments of Baton Rouge, Baker and Zachary. This subparagraph shall not apply for entitlement periods beginning after October 1, 1981, if entitlement funds are not appropriated to the government of the State of Louisiana.

(d) *Entitlement of the Parish of Orleans.* The provisions of paragraphs (a), (b) and (c) of this secton shall not apply to the entitlements of the Parish of Orleans. The Parish of New Orleans shall be entitled to receive for each entitlement period beginning on or after January 1, 1977, from the State government's entitlement an additional amount equal to 7.5 percent of the amount it is otherwise entitled to receive. This subparagraph shall not apply for entitlement periods beginning after October 1, 1981, if entitlement funds are not appropriated to the State government of Louisiana.

### § 51.32 Population.

(a) *Population generally.* Population shall be determined on the same basis as resident population is determined by the Bureau of the Census for general statistical purposes.

(b) *Undercount adjustment.* To adjust for any possible undercount during the 1980 census, the Director shall—

(1) As soon as practicable, request the Bureau of the Census to adjust the population data provided to include a reasonable estimate of the number of resident persons not count-

ed in the 1980 census or subsequent revisions thereof.

(2) Estimates received from the Bureau of the Census shall be used to calculate the allocations for entitlement periods beginning after receipt of such estimates.

(c) *Adjustment as result of legal immigrants.* The determination of population shall reflect any adjustments made pursuant to Section 118 of Pub. L. 96-369 conducted due to a major population change resulting from the movement of a large number of Cuban or Haitian legal immigrants into a jurisdiction within 6 months after the 1980 census. The adjustments to such population figures shall be reflected in entitlement periods beginning with fiscal year 1981 and shall continue to be used until the Bureau of the Census makes available 1981 population estimates.

(d) *Population of Indian tribes and Alaskan native villages.* (1) The population of an Indian tribe or Alaskan native village is the resident population as of April, 1980, defined as—

(i) For Indian tribes, American Indians living on a reservation minus those in cities and towns, plus the number of American Indians living in Census Enumeration Districts (ED's) containing adjacent tribally owned trust lands of that tribe. Resident non-Indian members of families with an American Indian householder or spouse are also included in the population data.

(ii) The lands in each Oklahoma county which were part of one or more Indian reservations at the time of allotment will be treated jointly as the land of all the reservations located in that county. Therefore, within a given county, an Indian identified with a tribe whose historic reservation includes a portion of that county will be enumerated with that tribe regardless of whether they reside within their tribe's own historic reservation area or that of one of the other tribes. Areas inside cities and towns will be subtracted from the land of the tribes. Only an Indian identified with the tribe of the Indian governing body and their spouses and children living within the boundaries of the tribal area described above are to be included in the population data of Oklahoma Indian governments. The population of the Osage Tribal Council of Oklahoma is as defined in paragraph (d)(1)(i) of this section since this tribe has its own current reservation.

(iii) For Alaskan native villages, the number of American Indians, Eskimos and Aleuts living in the village on the April 1, 1980, Census date. Resident non-Alaskan native members of families with an Alaskan native householder or spouse are also included in the population data.

(2) The Director will request the Bureau of the Census to provide updated population estimates for Indian tribes and Alaskan native villages when such estimates are provided for other local governments in the Revenue Sharing Program.

## Subpart D—Prohibitions and Restrictions on Use of Funds

### § 51.40 Matching funds.

The prohibition against the use of entitlement funds for matching purposes has been repealed. After January 1, 1977, a recipient government may expend its entitlement funds for this purpose without restriction.

### § 51.41 Permissible expenditures for local government.

The priority expenditure restrictions on the use of entitlement funds by units of local government have been repealed. After January 1, 1977, a recipient government may expend its entitlement funds for any purpose permissible under State or local law.

### § 51.42 Wage rate and labor standards.

(a) *Construction laborers and mechanics.* A recipient government shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of $2,000 and of which 25% or more of the cost is paid out of its entitlement funds:

(1) Will be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a-5); and

(2) Will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Wage rates.* In projects to which the Davis-Bacon Act standards are applicable, the recipient government must ascertain the U.S. Department of Labor's wage rate determination for each intended project and insure that such wage rates are incorporated in the contract specifications. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional Office of the U.S. Department of Labor at least 30 days before the invitation for bids, or in the case of construction covered by general wage rate determination, the appropriate rate may be obtained from the FEDERAL REGISTER.

(c) *Government Employees.* A recipient government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25% or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.101(a) of this part.

### § 51.43 Lobbying.

(a) *In general.* Entitlement funds may not be used by any State or unit of local government for the purpose of lobbying (as defined in § 51.2(j) of this part) concerning the provisions of the Act.

(b) *Activities prohibited.* Prohibited lobbying activities include, but are not limited, to the following:

(1) Personal solicitation of individual members of a legislative body to influence legislation regarding the General Revenue Sharing Program by personal interview, letter, financial contributions, and other means.

(2) Employment of a lobbyist to engage in proscribed activities.

(c) *Activities permitted.* Without violation of this section, a recipient government may:

(1) Use revenue sharing funds to pay dues to national or State organizations.

(2) Use revenue sharing funds to attempt to influence public opinion or to convey opinions and judgments to the public regarding provisions of the Act, by publication, distribution of books, pamphlets and other writings.

### § 51.44 Use of entitlement funds for debt retirement.

Where the actual expenditures of the proceeds of indebtedness were made after January 1, 1977, the repayment of the indebtedness with entitlement funds is permissible, provided that the expenditures from the proceeds of the indebtedness were made in compliance with the restrictions and prohibitions set forth in Subparts D and E of this part.

### § 51.45 Use of entitlement funds in accordance with State or local law.

A recipient government shall expend its entitlement funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues to the extent that those laws and procedures do not conflict with the provisions of the Act or regulations promulgated thereunder.

### § 51.46 Procedures for effecting compliance.

(a) *Compliance with substantive provisions.* If a recipient government fails to comply with the requirements of this subpart, the Director may implement the procedures for effecting compliance contained in § 51.3 (a) through (d) of Subpart A.

(b) *Compliance with reporting requirements.* If a recipient government fails to comply with the reporting requirements of this subpart, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

## Subpart E—Nondiscrimination by States and Local Governments Receiving Entitlement Funds

### § 51.50 Purpose.

The purpose of this subpart is to effectuate section 122 of the Act which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to a qualified handicapped individual, as provided in section 504 of the Rehabilitation Act of 1973, or any prohibition against discrimination on the basis of religion (as modified by the exemptions and exclusions contained in the Civil Rights Act of 1964, as amended or the Civil Rights Act of 1968), shall also apply to any such program or activity.

### § 51.51 Definitions.

Unless the context provides otherwise, as used in this subpart, the term:

(a) "Attorney General" means the Attorney General of the United States, or a designate.

(b) "Complaint" means an allegation submitted in writing to the ORS which sets forth the nature of the discrimination alleged and the specific facts upon which the allegation is based. The complaint may be filed by an individual or organization which believes that a recipient government has or is committing discrimination prohibited by the provisions of this subpart.

(c) "Compliance review" means a review, initiated at the discretion of the Director, of a recipient government's employment practices, facilities, or delivery of services for the purpose of ascertaining compliance with the provisions of this subpart.

(d) "Determination" means the decision by the Director following a notification of noncompliance as to whether a recipient government is in compliance or in noncompliance with the provisions of this subpart.

(e) "Facility" means all or any portion of a building, structure, parking lot, road, walk, equipment or other real or personal property or interests therein.

(f) "Finding" means the decision by the Director after the completion of an investigation or compliance review that it is more likely than not that a recipient government or secondary recipient is in noncompliance with the provisions of this subpart.

(g) "Funded" means entitlement funds have been or are being made available for expenditure in, or substantially benefit, a program or activity.

(h) "Holding" means any finding of fact or conclusion of law by a Federal court, a State court, or a Federal administrative law judge (after notice and opportunity for a hearing), which has been litigated, identifies the recipient government or part thereof which is in noncompliance and is to the effect that there has been exclusion, denial, or discrimination on the grounds of race, color, national origin, sex, age (other than in employment), handicapped status or religion as prohibited under section 122 of the Act. Except as otherwise provided in § 51.67, a holding is conclusive as to the issue of discrimination.

(i) "Investigation" means fact-finding efforts by the Office of Revenue Sharing or other agency undertaken after receiving a complaint, or other information, that a recipient government has failed to comply with the provisions of this subpart.

(j) "Noncompliance" means that the Director or an administrative law judge has found or determined that a recipient government has violated the provisions of this subpart.

(k) "Notification of noncompliance" means the notification given to a recipient government of a finding or receipt by the Director of a holding.

(l) "Program or activity" means the operations of an agency or organizational unit of a recipient government, or the operations or organizational unit of a secondary recipient, funded with entitlement funds (examples include, but are not limited to a police department, department of corrections, health department).

**§ 51.52 Discrimination prohibited.**

(a) *In general.* No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity of a recipient government or a secondary recipient. Also prohibited is discrimination:

(1) on the baisis of age under the Age Discrimination Act of 1975, effective July 1, 1979 (hereinafter referred to as discrimination on the basis of age);

(2) with respect to a qualified handicapped individual, as provided in section 504 of the Rehabilitation Act of 1973, as amended, (hereinafter referred to as discrimination on the basis of handicapped status); or

(3) on the basis of religion, as modified by exemptions and exclusions contained in the Civil Rights Act of 1964, as amended or the Civil Rights Act of 1968, (hereinafter referred to as discrimination on the basis of religion).

(b) *Specific discriminatory actions prohibited.* (1) Except as otherwise provided in § 51.55(c)(1) and other sections in this subpart with respect to services, a recipient government shall not on the ground of race, color, national origin, sex, handicapped status or age:

(i) Deny any service or other benefit provided.

(ii) Provide any service or other benefit, which is not equal to, or is provided in a different form, than that provided to others.

(iii) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit.

(vi) Determine the types of services, or other benefits or facilities which will be provided or the class of individuals to whom, or the situation in which, such services or other benefits or facilities will be provided by utilizing criteria or methods of administration which have the effect of:

(A) Subjecting individuals to discrimination;

(B) Perpetuating the results of past discrimination; or

(C) Defeating or substantially impairing the accomplishment of the objectives of the programs or activities with respect to individuals of a particular race, color, national origin, and sex, handicapped status or age.

(2) With respect to planning and advisory boards, a recipient government shall not on the ground of race, color, national origin, sex, handicapped status, or religion, deny any person an equal opportunity to participate as an appointed member of planning or advisory bodies.

(3) With respect to employment, a recipient government shall not utilize criteria or methods of administration that have the effect of:

(i) Subjecting individuals to discrimination on the basis of race, color, national origin, sex, handicapped status, or religion in any program or activity.

(ii) Perpetuating the results of past discriminatory practices.

(iii) Defeating or substantially impairing the accomplishment of the objectives of the program or activities with respect to individuals of a particular race, color, national origin, sex, handicapped status, or religion.

(4) With respect to facilities, a recipient government shall not on the grounds of race, color, national origin, sex, age, or handicapped status, except as otherwise provided in § 51.55 and other sections of this subpart, make selections of site or location of facilities which have the effect of:

(i) Excluding individuals from such facilities.

(ii) Denying the individuals the benefits of such facilities.

(iii) Subjecting individuals using the facilities to discrimination.

(5) A recipient government shall not intimidate, threaten, coerce, or in any way retaliate against any person who files a complaint against that government alleging discrimination which is covered by the provisions of this sub-

part, who assists the ORS in an investigation, or any other proceedings under this subpart or who opposes a practice made unlawful by this subpart.

(6) A recipient government shall not use any unvalidated selection device, including, but not limited to, a minimum height or weight requirement or physical agility test which operates to disproportionately exclude members of a protected class. Use of such a selection device is a violation of this subpart; the device must either be validated or replaced with a selection device that has less severe impact pursuant to the Uniform Guidelines on Employee Selection Procedures.

(7) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragaph (a) of this section and should not be considered all-inclusive.

(c) *Exemptions.* The provisions of paragraphs (a) and (b) of this section concerning prohibited discrimination shall not apply:

(1) Where a recipient government demonstrates by clear and convincing evidence that a program or activity, with respect to which discrimination is alleged, is not funded in whole or in part with entitlement funds.

(2) To construction projects commenced prior to January 1, 1977, with respect to discrimination on the basis of handicapped status, except as provided in § 51.55(k)(11). A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or of any substantial portion of the project.

### § 51.53 Employment discrimination.

(a) *Employment practices.* In general a recipient government shall not discriminate on the grounds of race, color, national origin, sex or religion in the following specific activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Setting rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Granting leaves of absence, sick leave, or other leave;

(6) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social recreational programs; and

(9) Any other term, condition, or privilege of employment.

(b) *Uniform Guidelines on Employee Selection Procedures.* The Equal Employment Opportunity Commission (EEOC), the Office of Personnel Management, the Department of Justice, the Department of Labor and the Department of Treasury, in carrying out their responsibilities in ensuring compliance with Federal equal employment opportunity law, have adopted Uniform Guidelines on Employee Selection Procedures to assist in establishing and maintaining equal employment opportunities. These Guidelines are in 29 CFR Part 1607; 5 CFR 300.103(c); 990-1 (Book 3) of the Federal Personnel Manual; 28 CFR 50.14, and 41 CFR 60.3. These Guidelines, among other things, recognize the unlawfulness of the use of any employee selection procedures (including tests and minimum education levels) which disqualify a disproportionate number of persons on grounds of race, color, religion, sex or national origin and which have not been validated or otherwise justified in accordance with Federal law. Discrimination on the basis of handicapped status and age are not covered by the Guidelines. Recipient governments shall used selection procedures that comply with the provisions of the Guidelines, and a violation of the Guidelines shall constitute a violation of this subpart.

(c) *Preemployment inquiries.* A recipient may make inquiries of an applicant for employment concerning the applicant's race, color, national origin, sex, or religion only for purposes permissible under the Uniform Guidelines on Employee Selection Procedures.

(d) *Self-review.* Recipient governments may conduct continuing reviews of their programs or activities, in accordance with Sections 4, 15 and the appendix of the Uniform Guidelines on Employee Selection Procedures, to determine whether their employment practices have the effect of denying equal employment opportunity on the basis of race, color, national origin, sex or religion. Whenever a self-review indicates that an employment practice is not in compliance with the Guidelines or this subpart, the recipient government is encouraged to take appropriate remedial action.

### § 51.54 Employment discrimination on the basis of sex.

The EEOC has adopted guidelines on employment discrimination on the basis of sex (29 CFR Part 1604). These guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

### § 51.55 Nondiscrimination on the basis of handicap (interim).

(a) *Definitions.* As used in this section the phrase:

(1) "Handicapped individual" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(2) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a recipient government as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (a)(1) of this section but is treated by a recipient government as having such impairment.

(6) "Qualified handicapped individual" means (i) with respect to employment, a handicapped individual who, with reasonable accommodation, can perform the essential functions of the job in question; and (ii) with respect to services, a handicapped individual who meets the essential eligibility requirements for the receipt of such services.

(b) *General prohibitions with respect to discrimination against a qualified handicapped individual.*

(1) Those general prohibitions described in § 51.52(b) of this subpart, also apply to discrimination against a handicapped individual, with the exception of § 51.52(b)(1) (ii), (iii) and (iv) of this section which are covered

by the provisions of this subsection. In addition, a recipient government shall:

(i) Not exclude a qualified handicapped individual from participation in programs or activities open to the general public, regardless of the availability of permissibly separate or different programs or activities designed especially for the handicapped;

(ii) Administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped individuals;

(iii) Take appropriate steps to ensure that communications with applicants, employees, beneficiaries, and the general public are available to persons with impaired vision or hearing, through means such as brailled or taped material, telecommunication devices, televised information or other media;

(iv) Take the appropriate steps to ensure that the public hearings required under §§ 51.13 and 51.14 of this part are accessible to qualified handicapped individuals and that notice of such hearings is made available to individuals with impaired vision and hearing, through means such as telecommunication devices, brailed or taped material, televised information, qualified sign language interpreters or other media;

(v) Provide a qualified handicapped individual with an aid, benefit, or service that is as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(vi) Not provide a different or separate aid, benefit, or service to qualified handicapped individuals or to any class of qualified handicapped individuals than is provided to others unless such action is necessary to provide qualified handicapped individuals with aid, benefits, or services that are as effective as those provided to others;

(vii) Not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the program or activity;

(viii) A recipient government shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(A) Have the effect of subjecting qualified handicapped individuals to discrimination on the basis of their handicaps;

(B) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient government's program with respect to handicapped individuals; or

(C) Perpetuate the discrimination of another department of the recipient government if both departments are subject to common administrative control or are agencies of the same recipient government; and,

(ix) [Reserved]

(2) The exclusion of persons that are not handicapped individuals from the benefits of a program limited by Federal statute or executive order to handicapped individuals, or the exclusion of a specific class of handicapped individuals from a program limited by Federal statute or executive order to a different class of handicapped individuals, is not prohibited by this section.

(3) For purposes of this section, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped individuals. They must, however, afford qualified handicapped individuals equal opportunity to obtain the identical result, or achievement in the most integrated setting appropriate to the individual's needs.

(4) A recipient government which government receives $25,000 or more entitlement funds in each entitlement period, shall, at the request of, and in consultation with such individual, provide appropriate auxiliary aids to individuals with impaired sensory, manual or speaking skills, where necessary to prevent a qualified handicapped individual from being denied the benefits of, excluded from participation in or subjected to discrimination under a program or activity. Such auxiliary aids may include brailled or typed material, the provision of qualified sign language interpreters, the provision of telecommunication devices, captioned films, video tapes, televised information or other media. The Director may require recipient governments which

receive less than $25,000 in entitlement funds in any entitlement period to provide appropriate auxiliary aids when the Director finds that such aids are appropriate to remedy a violation of the provisions of this section.

(5) The enforcement provisions contained in this subpart are applicable to violations of the provisions of this section.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) *Employment discrimination against a qualified handicapped individual.* (1) A recipient government shall:

(i) Not discriminate against a qualified handicapped individual in employment in any program or activity;

(ii) Not participate in a contractual or other relationship that has the effect of subjecting a qualified handicapped applicant or employee to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient government, and with organizations providing training and apprenticeship programs;

(iii) Make all decisions concerning employment under any program or activity in a manner which ensures that discrimination on the basis of handicap does not occur and not limit, segregate, nor classify applicants or employees in any way that adversely affects their opportunities or status because of handicap;

(iv) Take appropriate steps to ensure that communications with its applicants and employees are available to persons with impaired vision and hearing as described in *§ 51.55(b)(1)*(iii) and (b)(4);

(v) Not discriminate against a qualified handicapped individual in the following specific activities:

(A) Recruitment, advertising, and the processing of applications for employment;

(B) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(C) Setting rates of pay or any other form of compensation and changes in compensation;

(D) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(E) Granting leaves of absence, sick leave, or any other leave;

(F) Providing fringe benefits available by virtue of employment, whether or not administered by the recipient government;

(G) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(H) Employer sponsored activities, including social or recreational programs; and

(I) Any other term, condition, or privilege of employment.

(2) A recipient government's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

(3) A recipient government's obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are more limited for handicapped individuals than for non-handicapped individuals.

(h) *Reasonable accommodation.* (1) A recipient government shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the recipient government can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(2) Reasonable accommodation may include:

(i) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (e.g., telecommunications devices and other telephone devices), the provision of readers or qualified sign language interpreters, and other similar actions. Accommodations shall be made in consultation with the handicapped individual.

(3) The determination of whether an accommodation would impose an undue hardship on the operation of a recipient government's program or activity shall be made on a case-by-case basis upon consideration of the following factors:

(i) The overall size of the recipient government's operations with respect to number of employees, number and type of facilities, and size of budget;

(ii) The type, composition and structure of the specific program or activity and the structure of the workforce required; and

(iii) The nature and cost of the accommodation needed. Such reasonable accommodation may require a recipient government to undertake more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential functions of the job in question.

(4) A recipient government may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(i) *Employment criteria and policies.* (1) A recipient government may not use any employment test, selection criterion or policy, that screens out, or tends to screen out from consideration for employment, a handicapped individual or any class of handicapped individuals unless:

(i) The test, selection criterion or policy as used by the recipient, is shown to be directly related to the essential functions of the position in question, and

(ii) Alternative job-related tests, criteria or policies that do not screen out, or tend to screen out as many handicapped individuals are shown to be not available.

(2) A recipient government shall select and administer tests using procedures (e.g. auxiliary aids such as readers for visually-impaired individuals or qualified sign language interpreters for hearing-impaired individuals) that accommodate the special problems of handicapped individuals to the fullest extent consistent with the objectives of the test. The test results shall accurately reflect the applicant's or employee's ability to perform the essential functions of the job in question, rather than the applicant's or employee's impaired sensory, manual or speaking skills, except where such skills are essential requirements of the job.

(3) If a recipient government has established a test, selection criterion or policy that explicitly or implicitly screens out, or tends to screen out, a class of handicapped individuals from a particular job, and cannot establish that the class as a whole is unqualified to perform the job, the recipient government shall evaluate each such individual who applies for the job to determine whether the applicant can perform the essential functions of the job in question despite the handicap.

As part of the determination, the recipient government shall also decide whether such applicant would be qualified to perform the essential functions of the job in question through reasonable accommodation without undue hardship, as provided in § 51.55(h).

(j) *Preemployment inquiries.* (1) Except as provided in paragraph (j)(2) and (3) of this section, a recipient government may not conduct a preemployment medical examination or make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or the severity of a handicap. A recipient government may, however, make preemployment inquiry into an applicant's ability to perform the essential functions of the job.

(2) When a recipient government is taking remedial action to correct the effects of past discrimination; when a recipient government is taking voluntary action to overcome the effects of conditions that resulted in limited participation in a program or activity, or

when a recipient government is taking affirmative action, the recipient government may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(i) The recipient government states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(ii) The recipient government states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (j)(4) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this section.

(3) Nothing in this section shall prohibit a recipient government from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (i) All entering employees are subjected to such as examination regardless of handicap, and (ii) the results of such an examination are used only in accordance with the requirements of this section.

(4) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms and shall be accorded confidentiality as used for medical records, except that:

(i) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped individuals and regarding necessary accommodations;

(ii) First aid and safety personnel may be informed, whether appropriate, if the condition might require emergency treatment; and

(iii) Government officials investigating compliance with the Act shall be provided relevant information upon request.

(k) *Program accessibility.*—(1) *Discrimination prohibited.* No qualified handicapped individual shall, because the facilities owned or leased by a recipient government are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of a recipient government, which government receives entitlement funds.

(2) *Existing facilities.*—(i) *Program accessibility.* A recipient government shall operate each program or activity in existing facilities owned or leased by it, so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped individuals. Recipient governments are not necessarily required to make each existing facility, or every part of an existing facility accessible to and usable by handicapped individuals. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this regulation except as otherwise provided in this section. Recipient governments shall not be required to revoke leases on which lessors refuse to make the structural changes needed if no more accessible facility is available, but shall use the provisions of subparagraph (ii) to ensure that the maximum possible accessibility is achieved.

(ii) *Methods of compliance.* A recipient government may comply with the requirements of paragraph (1) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of paragraph (k)(7) of this section, or any other methods that result in making its programs or activities accessible to handicapped individuals. A recipient government is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (k)(1) of this section. In choosing among available methods for meeting the requirements of paragraph (k)(1) of this section, a recipient government shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program.

(3) *Exception for small recipient governments.* If a recipient government, which government receives less than $25,000 in entitlement funds, in any entitlement period, determines, after consultation with a handicapped individual seeking a health, welfare or social service, that there is no method of complying with paragraph (k)(1) of this section other than making a significant alteration in its existing facilities, that government may, as an alternative, refer the handicapped individual to other providers of those services that are accessible at no additional cost to the handicapped individual. Examples of other providers of those services are States, counties or other larger units of local government.

(4) [Reserved].

(5) [Reserved].

(6) [Reserved].

(7) *New construction.* The construction of facilities by a recipient government financed in whole or in part with entitlement funds or the construction of a facility pursuant to a contract for the recipient government to lease the building facility in its entirety, on or after January 1, 1977, shall be accomplished so as to be readily accessible to and usable by handicapped individuals.

(8) *Alterations.* Alterations to existing facilities owned, or leased by a recipient government, which alterations are funded with entitlement funds and commenced on or after January 1, 1977, shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped individuals.

(9) *American National Standards Institute Accessibility Standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A 117.1-1961 (1971)),* which is incorporated by reference, shall constitute compliance with paragraphs (k) (1) and (2) of this section. A recipient government also may use the revised ANSI standards issued in May of 1980, which are also incorporated by reference and are obtainable at the same address. A recipient government may use standards other than the 1961 or 1980 standards or other methods, if the government establishes that it is clearly evident that equivalent or better access to the facility or part of the facility is provided.

(10) *Exception for construction projects commenced prior to January 1, 1977.* The provisions of this subsection do not apply to buildings or construction projects, including those funded with revenue sharing funds, commenced prior to January 1, 1977, including those funded with revenue sharing funds, unless it is determined that programs or activities funded in whole or in part with revenue sharing funds are conducted within or make use of such facilities, in which case, those programs and activities must be readily accessible to and usable by handicapped individuals as described in paragraphs (k)(2) (i) and (ii) of this section.

(11) *"Commencement of construction" defined.* A construction project shall be deemed to have commenced when the recipient government has obligated itself by contract for the physical construction of the project or any substantial portion of the project.

(l) *Coordination of unresolved legal issues.* Whenever the Director receives a complaint which alleges a violation of the provisions of this section and involves a legal issue that has not been resolved judicially or administratively, the Director shall request guidance from the Department of Justice which was designated by Executive Order 12250 to coordinate Section 504, within one week of receipt of such complaint. The Director may defer action on the complaint pending receipt of the guidance if it is determined that such guidance will be received within one month from the issuance of the request. Thereafter, the Director shall then act in accordance with the guidance. If the Director determines that the Department of Justice cannot provide guidance concerning the proper course of action within a period of one month (30 days), the Director shall proceed to initiate fact-finding activities with respect to the complaint. During that process, the Director shall continue to keep the Department of Justice advised of the actions taken, pending receipt of the guidance requested.

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*Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018—(212) 354-3300. Copies are also on file with the Federal Register.

### § 51.56 [Reserved]

### § 51.57 Discrimination on the basis of national origin.

The EEOC has adopted Guidelines on discrimination on the basis of national origin (29 CFR Part 1606). These Guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

### § 51.58 Discrimination on the basis of religion.

(a) *In general.* Any prohibition against discrimination on the basis of religion, or any exclusion or exemption from such discrimination, as provided in the Civil Rights Act of 1964 or title VIII of the Act of April, 1968, (hereafter referred to as the Civil Rights Act of 1968), shall apply to any program or activity of a recipient government which government receives entitlement funds under the Act.

(b) *EEOC Guidelines.* The EEOC has adopted Guidelines on discrimination on the basis of religion (29 CFR Part 1605). These Guidelines provide practical assistance to enable recipient governments to bring themselves into compliance with Federal law. Recipient governments shall comply with the provisions of these Guidelines, which are adopted by the ORS. A violation of these Guidelines shall constitute a violation of this subpart.

### § 51.59 Assurances required.

(a) *General.* In order to qualify for any payment of entitlement funds for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall execute to the satisfaction of the Director an assurance that all programs and activities of a recipient government will be conducted in compliance with the requirements of this subpart. The chief executive officer is also required to assure that in the event a Federal or State court or Federal administrative law judge makes a holding as defined in § 51.51(h) of this subpart against the recipient government, such recipient government will forward a copy of the holding to the Director within 10 days of receipt by the recipient government. Assurances required under this paragraph shall be in such form and detail as prescribed by the Director.

(b) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of subpart E of this part which include submission of assurances and requests for information concerning compliance with the provisions of this subpart, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in this subpart.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (b)(1), constructively waive such funds pursuant to § 51.25(b) of this part. Entitlement payments constructively waived shall not be paid to the recipient government.

### §51.60 Compliance information and reports.

(a) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Office of Revenue Sharing and the Department of Justice during normal business hours to such facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with the provisions of this subpart. Where any information required of a recipient government is in the exclusive possession of any other agency, institution, or person, and such agency, institution, or person fails or refuse to furnish this information to the ORS or its authorized representatives, the responsibility for providing such information shall remain with the recipient government.

(b) *Compliance reports.* Each recipient government shall submit on request of the Director timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Director may determine to be necessary or useful to ascertain whether the recipient government has complied or is complying with the requirements of the subpart. Recipient governments shall make available on request of Office of Revenue Sharing officials, racial, ethnic, male/female, and national origin data showing the extent to which minorities and females will be beneficiaries of entitlement funds. The recipient government shall also make available on request similar data concerning age distinctions and handicapped status. In the case of any program under which a primary recipient government extends or will extend entitlement funds to any secondary recipient, the secondary recipient shall submit such compliance reports to the primary recipient government as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient government under this subpart. Each recipient government shall identify, on request of the Office of Revenue Sharing, any State or local agency which has been legally authorized to monitor its civil rights compliance activities.

(c) *Delay and constructive waiver of entitlement payments.* (1) The failure of a recipient government to comply with the assurance and reporting requirements of Subpart E of this part which include submission of reports and response to specific requests for information concerning possible violation of this subpart, may result in the delay of the further payment of entitlement funds until the assurance, report or information requested is received. A delay of the payment of entitlement funds shall not be subject to the procedures for affecting compliance set forth in this subpart.

(2) The Director may, after the payment of entitlement funds have been delayed for one or more of the entitlement periods pursuant to paragraph (c)(1) of this section, determine that the payments to the recipient government for a particular entitlement period are constructively waived pursuant to § 51.25(b) of this part. Entitlement payments constructively waived will no longer be available to the recipient government.

### § 51.61 Compliance reviews and affirmative action.

(a) *Compliance Reviews.* (1) The Director may periodically conduct compliance reviews of selected recipient governments.

(2) Selection for review shall be made on the basis of any of the following considerations:

(i) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient government;

(ii) The percentage of women and minorities in the population receiving benefits from a program or activity;

(iii) The number and nature of discrimination complaints filed against a recipient with ORS or other Federal agencies;

(iv) The scope of the problems revealed by any investigation of allegations of noncompliance against a recipient government; and

(v) The amount of entitlement funds provided to the recipient government.

(3) Within 90 days after selection of a recipient government for review, the Director shall inform the recipient government that it has been selected and will initiate the review. The

review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient government of:

(i) The practice(s) to be reviewed;

(ii) The programs or activities affected by the review;

(iii) The opportunity to make, at any time prior to the receipt of the Director's findings, a documentary submission responding to the Director, explaining, validating, or otherwise addressing the practices under review; and

(iv) The schedule under which the review will be conducted and a finding made.

(4) Within 180 days after the initiation of the review, the Director shall advise the chief executive officer of the appropriate recipient government of:

(i) The results of the review; and

(ii) Where appropriate, a recommendation for corrective action.

(5) If within 30 days after the recipient government has been notified of corrective actions required pursuant to subparagraph (4) of this paragraph, a compliance agreement is not secured, the Director shall institute administrative proceedings pursuant to § 51.64, *et seq.* and Subpart G of this part.

(b) *Affirmative action.* The EEOC has adopted Guidelines for affirmative action (29 CFR Part 1608). These Guidelines indicate when voluntary affirmative action is appropriate and are adopted by the ORS.

### § 51.62 Administrative complaints and investigations.

(a) *Administrative complaints.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart, may personally or by a representative, file a complaint with the Director of the Office of Revenue Sharing (Treasury Department, Washington, D.C. 20226). A person who has not personally been subjected to discrimination may also file a complaint. The complaint must be a written statement setting forth the nature of the discrimination alleged and the facts upon with the allegation is based.

(b) *Investigations.* (1) The Director shall advise the chief executive officer of the recipient government of any administrative complaint received pursuant to paragraph (a) of this section within 30 days of the receipt of such complaint.

(2) The Office of Revenue Sharing shall investigate administrative complaints described in paragraph (a) of this section. Information contained within the files of the Office of Revenue Sharing or other information which suggests discrimination prohibited by this subpart may become part of an ongoing or future investigation.

(3) Such investigations will be made with the assistance of the complainant(s) and of the recipient government to the maximum extent feasible.

(4) In appropriate cases the Director may defer to the Attorney General as provided for in an agreement with the Department of Justice.

(5) The scope of such investigations may not be limited to the administrative complaint or other information, but may include any matters either discovered during the investigation or reasonably flowing from said administrative complaint or other information.

(6) The Director shall to the maximum extent feasible, make a finding within 90 days of receipt of an administrative complaint or State administrative agency determination where there is sufficient evidence of noncompliance.

(7) To the maximum extent feasible, the Director will make use of the agreements between agencies as provided for in § 51.69 of this subpart in order to facilitate compliance with the provisions of this subpart.

### § 51.63 Notification to the complainant.

Upon written request, the complainant shall be advised of the status of the investigation or other proceeding undertaken in response to the complaint. Within 10 days after the Director issues a finding or determination, or receives a holding, the Director shall notify the complainant or the complainant's counsel.

### § 51.64 Notification of noncompliance.

(a) *Notification of noncompliance after a finding by the Director.* The Director shall issue a notice of noncompliance in writing to the chief executive officer of the recipient government (and in the case of a unit of local government, also the Governor of the State in which the recipient government is located) within 10 days of making a finding. The notice shall be to the effect that it is more likely than not that the recipient government has failed to comply with the provisions of this subpart. The notice shall further state that a determination will be made within 30 days after receipt of this notice, and that within this period, the recipient government may enter into a compliance agreement with the Director, present additional evidence that demonstrates compliance with this subpart and/or proves by clear and convincing evidence that the program or activity complained of was not funded with entitlement funds. The Assistant Attorney General for Civil Rights shall also be notified of the finding.

(b) *Notification of noncompliance by the Director after receipt of a holding.* (1) Within 10 days of receipt of a holding, the Director shall issue a notice of noncompliance to the chief executive officer of the recipient government in writing (and in the case of a unit of local government, to the Governor of the State in which the recipient government is located).

(2) The notice shall state that the Office of Revenue Sharing is required to adopt the holding as conclusive on the issue of discrimination and that the recipient government is in noncompliance with the provisions of this subpart. The notice may include the issues beyond those contained in the holding. The notice shall state that unless within 30 days after receipt of this notice the recipient government enters into a compliance agreement or proves by clear and convincing evidence that the program or activity complained of was not funded with entitlement funds, the Director shall issue a determination that the recipient government has failed to comply with the provisions of this subpart. The Assistant Attorney General for Civil Rights shall also be notified of the finding.

(c) *Effect of a Stay.* An administrative proceeding based on a holding shall be suspended to the extent that a stay is issued by a court of competent jurisdiction with respect to the holding. The suspension shall only affect those issues covered by the stay.

### § 51.65 Determination by the Director.

(a) *Determination by the Director after a finding of discrimination.* (1) The Director shall, within 30 days after the recipient government's receipt of the notice of noncompliance, issue a determination as to whether the recipient government has failed to comply with this subpart to the chief executive officer of the recipient government (and in the case of a unit of local government, the Governor of the State in which the recipient government is located shall also be notified). The Assistant Attorney General for Civil Rights shall also be notified of the determination.

(2) Once a determination of noncompliance is received, a recipient government shall have 10 days in which to enter into a compliance agreement or request an administrative hearing. If a recipient government fails to take either action within the 10-day period, the Director shall immediately suspend the further payment of entitlement funds to such recipient government. The suspension in effect shall remain suspended until the recipient government enters into a compliance agreement.

(b) *Determination by the Director after notice of a holding.* (1) The Director shall, within 30 days after the recipient government's receipt of notification of noncompliance based on a holding, issue a determination as to whether the recipient government is in compliance with this subpart to the chief executive officer of the recipient government (and in the case of a unit of local government, the Governor of the State in which the recipient government is located shall also be notified). The Assistant Attorney General for Civil Rights shall also be notified of the determination.

(2) The determination of noncompliance shall adopt the holding of the Federal or State Court or Federal administrative law judge as conclusive on the issue of discrimination and give the recipient government 10 days from receipt of the notification of the determination to enter into a compliance agreement or request an administrative hearing. The sole issue at the administrative hearing shall be whether the program or activity complained of was funded by entitlement funds. If the recipient government fails to take either action within the 10-day period, the Director shall immediately suspend the further payment of entitlement funds to such government.

(3) If the holding on which the determination is based is reversed by a appellate tribunal, or by agency review in the case of the holding of a Federal administrative law judge, the Director shall discontinue the administrative action begun as a result of the holding. Any suspension of entitlement funds resulting from the determination shall also be discontinued and those funds paid to the recipient government as quickly as possible.

### § 51.66 Compliance agreements.

(a) *In matters where the ORS was not a party to the proceeding.* For purposes of this subpart a compliance agreement includes an agreement in writing between the Federal or State agency or official responsible for prosecuting the claim (including the Attorney General of the United States) and the chief executive officer of the recipient government against whom the noncompliance with this subpart is alleged. Such compliance agreement may take the form of a consent decree to be entered in the proceedings before a court of record or to be entered by a Federal administrative law judge having jurisdiction over the proceedings. Counsel of record representing the chief executive officer of the recipient government may initiate or negotiate the compliance agreement on behalf of the chief executive officer of the recipient government. However, in each case the Director shall, through counsel or representative, approve or reject the compliance agreement. The Director may reject the compliance agreement if it is determined that the agreement has not adequately remedied the discrimination.

(b) *In matters involving a holding.* Where the Director acts on the basis of a holding, the remedial order of the Court or Federal administrative law judge shall constitute the basis of the compliance agreement to be entered into with the Director; *Provided, however,* That the lack of a remedial order does not affect the requirement that a recipient government enter into a compliance agreement with the Director within the time limits set forth in section 122(b) of the Act and §§ 51.64 and 51.65 of this subpart. Any agreement entered into prior to issuance of such remedial order may be appropriately modified when the order is entered.

(c) *In matters between the Director and a recipient government.* In those instances where a compliance agreement is negotiated between the Director and the chief executive officer of the recipient government, the agreement shall be one document signed by the parties containing the following:

(1) A statement of all matters that constitute the failure of the recipient government to comply with the requirements of this subpart;

(2) The terms and conditions with which the recipient government has agreed to comply in order to achieve compliance with the requirements of this subpart. Such terms and conditions may include the payment of restitution to persons injured by the failure of the recipient government to comply with any provisions of this subpart; and

(3) The signatures of the Director and the chief executive officer of the recipient government concerned.

(d) *Monitoring of compliance agreement.* The Director shall monitor compliance by recipient governments with the compliance agreement. As part of the monitoring process, the Director may require from recipient governments periodic reports which demonstrate continued compliance.

(e) *Effect of violation of compliance agreement.*

(1) If the recipient government fails to comply with the obligations stipu-

lated in this agreement, the Director shall issue a determination of noncompliance under section 122(b)(2) of the Act.

(2) The Director shall suspend the payment of entitlement funds to a recipient government 10 days after its receipt of the determination of noncompliance, unless such government either achieves compliance with the provisions of the compliance agreement or requests an administrative hearing. At any such hearing, the issues shall be limited to whether or not the recipient government has acted in compliance with the agreement.

(f) *Notification to complainants of compliance agreement.* Within 15 days after the execution of a compliance agreement (or, in the case of an agreement executed under paragraph (a) of this section, upon the approval of the Director if later than 15 days) the Director shall submit a copy of such agreement to the complainant(s). The submission of a copy of the compliance agreement to counsel of record (if any) for the complainants shall meet the requirements of this paragraph.

### § 51.67 Resumption of suspended entitlement payment.

The payment of entitlement funds, to a recipient government to which such payment has been suspended, shall be resumed when:

(a) The recipient government enters into a compliance agreement that satisfies the Director that the recipient government will comply with the provisions in this subpart.

(b) The administrative law judge, who made a preliminary finding under section 122(b)(3) of the Act, holds that the recipient government is in compliance with the provisions of this subpart; or

(c) The recipient government complies fully with the remedial order of a court or a Federal administrative law judge if the order covers all matters raised by the Director in the notice of noncompliance based on a holding to the recipient government; or

(d) After a rehearing or similar adjudicative proceedings a court or an administrative law judge which originally held that the recipient government had failed to comply with the provisions of this subpart, subsequently holds that the recipient government did not so fail to comply; or

(e) An appellate court reverses the findings of discrimination by a lower court or administrative law judge upon the basis of which the Director suspended the payment of entitlement funds.

### § 51.68 Exhaustion of administrative remedies.

For purposes of bringing a private civil action pursuant to section 124 of the Act a complainant shall be deemed to have exhausted the administrative remedies upon the expiration of 90 days from the date the administrative complaint was filed with the Director, where the Director:

(a) Issues a determination that the recipient government against whom the complaint was filed is in compliance with the provisions of this subpart; or

(b) Fails to make a determination on such complaint.

### § 51.69 Agreements between agencies.

(a) *Purpose of cooperative agreements.* The Director shall endeavor to enter into cooperative agreements with officials of other departments and agencies of the Federal government, or officials of State agencies (which have concurrent jurisdiction) to effectuate the purposes of this subpart, including the achievement of effective coordination within the executive branch in the implementation of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e), the Civil Rights Act of 1968, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(b) *Content of cooperative agreements.* The agreements between the Director and other agencies or officials shall describe the cooperative efforts to be undertaken, which may include, but need not be limited to:

(1) Sharing of resources during investigations and compliance reviews (either by having joint investigations or having one agency do an investigation for both);

(2) Cooperation during compliance activities including the issuance of findings or determinations, (including the adopting of other agency's findings or determinations where practical);

(3) Cooperation during administrative hearings including joint participation and sharing of resources.

(4) Deferral of agency action where one agency has begun compliance activities on the same complaint or set of circumstances and provision for resumption of action where the agency deferred to does not act in a timely manner;

(5) Sharing of information, including data, records and investigative and other files, computer printouts, lists and status reports on complaints received;

(6) Identification of liaison personnel and the establishment of periodic meetings to discuss common substantive and procedural problems;

(7) Protecting the confidentiality of information shared;

(8) Providing for notification of formal administrative actions instituted against jointly covered recipients and of the results of such actions, particularly those may be classified as holdings; and

(9) The establishment of lead agencies (in those areas in which lead agencies have not already been designated by statute or executive order) so that the designated lead agency will provide policy guidance in the area where two or more agencies share concurrent jurisdiction.

### § 51.70 Jurisdiction over property.

(a) *In general.* The Director shall have jurisdiction over any recipient government for purposes of this subpart for as long as that recipient government retains ownership or possession of any real or personal property or any interest therein, which was purchased in whole or in part with entitlement funds. Further, if such property is transferred to a secondary recipient or other party, the Director will retain jurisdiction over the recipient government for purposes of this subpart for as long as the property is used to provide benefits similar to those which were provided by the property before the transfer.

(b) *Definitions.* For the purposes of this section:

(1) Real property includes land, structures upon land and fixtures attached to land, and buildings or structures which cannot be removed without damage to the fixtures, buildings or structures.

(2) Personal property includes, at the least, non-expendable tangible property having a useful life or more than one year and an acquisition cost of $1,000 or more per unit of property.

(3) The transfer of property means the passage of the property to a secondary recipient, or to any other person, firm or agency.

(c) *Use of property to provide similar benefits.* For the purposes of this section the clause in subsection (a) "so long as the property is used to provide benefits similar to those provided by the property before the transfer" means the primary use or function of the property and not the specific or particular use of the property in the program or activity for which originally acquired.

(d) *Record keeping requirements.* Recipient governments shall maintain a separate record of real property and of tangible personal property having a value in excess of $1,000. Such records shall set forth the date of purchase, date of disposal or transfer and the transferee of the property. Upon outright sale, discard, or trade of such property the provisions of this section shall no longer be applicable.

## Subpart F—Fiscal Procedures and Auditing

### § 51.100 Definitions.

Unless the context requires otherwise, as used in this subpart, the term:

(a) "Compliance audit" means the review of the documentation concerning a recipient government's expenditure of entitlement funds to determine that those funds have been expended in compliance with the provisions of the Act and regulations.

(b) "Financial audit" means the examination of the financial statements of all funds of a recipient government in accordance with generally accepted auditing standards.

(c) "Financial statements" mean:

(1) Show the financial operations for a specific period of time, and

(2) If appropriate, present the financial position as of the end of that fiscal period, and

(3) Present the footnotes required for adequate disclosure.

(d) "Generally accepted auditing standards" means those auditing standards pronounced by the American Institute of Certified Public Accountants and incorporated in its *Statements on Auditing Standards*, or those in the financial and compliance element of the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued in 1981 by the Comptroller General of the United States.

(e) "Independent audit" means an audit conducted by independent public accountants, or by independent qualified acountants or examiners from a State or local agency. An independent public accountant or independent qualified accountant or examiner is one who has no personal interest directly or indirectly in the financial affairs of the government being audited, or in the financial affairs of any of the officers of the government being audited.

(1) In those States in which an audit is required by State law to be made of the State government by a State office or official, such audit shall be considered to meet the requirements of an independent audit provided the principal officer of the State audit agency is not responsible for the maintenance of the accounting records being audited and does not report to the officer responsible for maintenance of such accounting records and is:

(i) Elected by the citizens of the State; or

(ii) Elected or appointed by and reports to the State legislature or a committee thereof; or

(iii) Appointed by the Governor and confirmed by and reports to the legislature or a committee thereof.

(2) In those States in which an audit is made of local governments (or certain categories of local government) by a State office or official, such audit shall be considered to meet the requirements of an independent audit.

(3) Audits of local recipient governments made by an internal auditing ofice or officer shall be considered to meet the requirements of an independent audit provided the principal officer of the audit agency is not responsible for the maintenance of the official accounting records being audited and does not report to the officer responsible for maintenance of official accounting records, and is:

(i) Elected by the citizens of the local recipient governments; or

(ii) Elected or appointed by and reporting to the governing body of the local recipient government or a committee thereof; or

(iii) Appointed by the chief executive officer of the local recipient government and reports to the governing body of the local recipient government or a committee thereof.

(4) Audits other than those specified in paragraphs (e) (1), (2) and (3) of this section shall not be considered to be independent audits.

(f) "Independent public accountant" means independent certified public accountants and licensed public accountants licensed on or before December 31, 1970. Certification or licensing shall be by a regulatory authority of a State or other political subdivison of the United States.

### § 51.101 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate entitlement funds within 24 months from the end of the entitlement period to which the entitlement payment is applicable. The use, obligation or appropriation of entitlement funds shall be consistent with State or local law requiring a legislative enactment in ordinance or resolution form. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest accrued, shall be obtained by application to the Director. The application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Director may grant such extensions of time which appear necessary or appropriate.

(c) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Director to be prepared therefrom, and

(2) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that the funds have not been used in violation of the restrictions and prohibitions of this part. Tracing requires that vouchers in support of expenditures funded by the Act shall be identified. Identification can be made in any one of three ways as follows:

(i) Maintain a separate set of fund accounts; or

(ii) Maintain a separate bank account; or

(iii) Keep a memorandum record of the voucher numbers and amounts of the expenditures funded by entitlements received under the Act.

The accounting for entitlement funds shall, at a minimum, employ the same fiscal accounting and internal audit procedures as are used with respect to the expenditures from revenues derived from the recipient government's own sources.

(d) Provide to the Director and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Director may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

### § 51.102 Auditing and evaluation.

(a) *Audit requirement.* (1) Each recipient government which expects to receive entitlement funds for entitlement periods beginning on or after January 1, 1977, shall have an independent audit of its financial statements conducted for the purpose of determining compliance with the provisions of the Act, in accordance with generally accepted auditing standards, not less often than once every three years. The compliance aspects of the audit must be performed for the same year in which the financial audit is performed on the funds into which revenue sharing entitlements are deposited.

(2) Audits conducted to comply with the provisions of this section shall be submitted to the Director within eight months from the end of the fiscal year audited.

(3) Where applicable and practicable to do so, recipient governments shall employ the provisions of the Office of Management and Budget's Circular A-102, Attachment P in meeting the requirements of this section. The General Accounting Office publication *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and the OMB Compliance Supplement shall be used by auditors in the performance of these examinations.

(b) *Election by recipient government.* A recipient government may elect to have the requirements of paragraph (a) of this section not applicable to that government upon filing notice to the Director that the audits are conducted in compliance with State or local law and meet the following requirements:

(1) The financial statements of the recipient governments are audited by independent public accountants as defined in § 51.100(e) of this subpart, or by independent auditors as defined in § 51.100(f) of this subpart; and

(2) The audits of the recipient government are conducted in accordance with generally accepted auditing standards; and

(3) The audits of the recipient government will be conducted not less often than once every three years; and

(4) A compliance audit, as well as a financial audit, is conducted.

(c) *Inapplicability of audit requirement.* The requirement of paragraph (a) of this section shall not apply where the recipient government's allocation of entitlement funds for any of its fiscal years is less than $25,000. State or local law which requires an audit of such government's financial statements must be complied with in accordance with § 51.45 of this part, and will constitute compliance with paragraph (a). Such an audit conducted under State or local law need not be submitted to the ORS, but shall be made available upon request by the Director.

(d) *Modification of audit requirement.* A unit of local government may conduct an audit required pursuant to paragraph (a) of this section solely on those funds of accounts in the financial activity into which entitlement funds have been deposited where:

(1) The State in which the unit of local government is located, entered into an agreement on July 25, 1974, to conduct audits required by the Act on behalf of such units of local government, and

(2) The audits were not conducted as required for entitlement periods beginning after December 31, 1976, and before January 1, 1980.

(e) *Series of audits.* A series of independent audits may be used as an alternative to the provisions of paragraph (a) of this section if they are conducted in accordance with generally accepted auditing standards, over a period not to exceed three fiscal years, and cover, in the aggregate, all of the accounts of a recipient government. When electing a series of audits, a recipient government must perform the compliance audit for the same fiscal year in which the financial audit is performed on the fund into which entitlement funds are deposited. The reports will be considered in an aggregate as one report for the purpose of determining whether the recipient government has complied with the provisions of this part.

(f) *Audits by State governments; local governments receiving less than $25,000 in entitlement funds in one entitlement period.* (1) A State government which receives entitlement funds will be required to conduct audits described in paragraph (a) of this section only if such government receives entitlement funds for three consecutive entitlement periods. The required audit would then be conducted for any one of the three years in which entitlement funds were received.

(2) Units of local government which receive entitlement funds shall be required to conduct audits described in paragraph (a) of this section only when such governments receive $25,000 or more entitlement funds for each of the three consecutive entitlement periods. The required audit would then be conducted for any one of these three consecutive years in which $25,000 or more in entitlement funds were received.

### § 51.103 Waiver of audit requirement.

(a) *Basis for granting waiver.* The Director may waive the provisions of § 51.102 of this subpart in whole or in part, for any recipient government which makes application for such a waiver, for any fiscal period upon determining that:

(1) The accounts of such government are not auditable and the government is making substantial progress towards making its accounts auditable; or

(2) The government has been audited by a State audit agency which does not follow generally accepted auditing standards or which is not independent as defined in § 51.100 (d) and (e) respectively, and which is demonstrating progress toward taking the necessary corrective action.

(b) *Procedure for requesting waiver.* (1) The chief executive officer of the recipient government shall apply to the Director in writing for the waiver and provide the following information:

(i) If the waiver is requested due to unaudibility of government financial accounts, an assurance that in the course of determining compliance with § 51.102, the independent auditor rendered an opinion that part or all of the financial accounts are not auditable. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward making such financial accounts auditable.

(ii) If the waiver is requested pursuant to paragraph (a)(2) of this section, an assurance that the State audit agency is demonstrating progress toward performing audits in accordance with generally accepted auditing standards or becoming independent. The waiver request shall further clearly set forth the arrangements which have been made or steps taken toward establishing the use of generally accepted auditing standards or achieving independence.

(2) The Director shall determine whether the recipient government or the State audit agency is making substantial progress towards taking the necessary corrective action.

### § 51.104 Audits of secondary recipients.

A recipient government shall be responsible for an audit of the entitlement funds transferred to any secondary recipient, where the aggregate of the entitlement funds transferred to such secondary recipient during the fiscal year is $25,000 or more. Such audit shall be conducted pursuant to § 51.102(a), and the commentary on the audit requirements of the 1980 Amendments to the Act as published by the ORS and available to each recipient government. Audits performed for secondary recipients shall be performed in the same year as such audits are performed for the applicable primary recipient governments.

### § 51.105 Reliance upon audits under other Federal laws.

The Director may rely upon audits of the financial statements of recipient governments conducted in accordance with other Federal laws, for any fiscal period, provided that such audits substantially satisfy the requirements for audits contained in § 51.102(a) of this part. Audits and reports prepared in accordance with the procedures prescribed by OMB Circular A-102, Attachment P, will be acceptable to the Director as meeting the audit requirements of the Act, providing the OMB approved compliance supplement is used, and all funds of the recipient are examined.

### § 51.106 Audit opinions.

(a) *In general.* Opinions made with respect to audits must be rendered as a part of the audit report and shall be in accordance with the opinion in general use for attesting to financial statements, as defined in § 51.100(c).

(b) *Nature of opinions.* Audit opinions may be unqualified, qualified, or adverse. Disclaimers of opinion will be considered on an individual case-by-case basis to determine acceptability. Appropriate opinions for special reports should be expressed where cash basis statements have been prepared.

### § 51.107 Scope of audits.

(a) *In general.* (1) Audits made pursuant to § 51.102(a) shall include all financial statements prepared from accounts which the recipient government is required to maintain pursuant to State or local law.

(2) Audits of such financial statements made pursuant to § 51.102(a) are required whether the funds being audited belong to the recipient government or whether the recipient government is holding such funds in a trust fund or other account which belongs to another political entity.

(3) Audits pursuant to § 51.102(a) are also required (even if the financial statements are prepared from accounts maintained by a political entity other than the recipient government, such as a quasi-independent board, commission, authority) if the Bureau of the Census has classified the political entity as being dependent for general statistical purposes upon the recipient government. The classification of governments is contained in "The Census of Governments, Governmental Organization (Vol. 1)," published by the Bureau of the Census every five years and updated on a current basis to reflect significant changes occurring between censuses.

(4) The audit shall be of the financial and compliance type described in the *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* as issued in 1981 by the Comptroller General of the United States, or the financial types prescribed by the American Institute of Certified Public Accountants

and incorporated in its *Statements on Auditing Standards.*

(b) *Verification of fiscal data reported to the Bureau of the Census.* The scope of the audit shall also include a verification of the recipient government's fiscal data as reported by it to the Bureau of the Census.

### § 51.108 Retention and submission of audit reports and workpapers.

(a) *Submission of audit reports.* The Director may require the chief executive officer of a recipient government to submit a copy of its audit report and other information as may be requested by the Director to determine compliance with the provisions of this subpart.

(b) *Retention of audit workpapers.* Audit workpapers and related reports shall be retained for three years after the issuance of the audit report, and shall be made available upon request to the Director and the Comptroller General or to their representatives. Recipient governments whose audits are performed by independent public accountants, not in their employ, may meet the requirement of this section by informing the firm or individual of this requirement and encouraging them to comply.

### § 51.109 Procedures for effecting compliance.

(a) *Compliance with substantive provisions.* If a recipient government fails to comply with the requirements of this subpart, the Director may implement the procedures for effecting compliance contained in § 51.3 (a) through (d) of Subpart A.

(b) *Compliance with reporting requirements.* If a recipient government fails to comply with the reporting requirements of this subpart, the Director may implement the delay of payment and/or constructive waiver provisions of § 51.3(e) of Subpart A and § 51.25(b) of Subpart C of this part.

## Subpart G—Proceedings for Reduction in Entitlement, Withholding, or Suspension of Funds

### § 51.200 Scope of subpart.

The regulations of this subpart govern the procedure and practice requirements involving adjudications where the Act requires reasonable notice and opportunity for a hearing. The adjudications covered in this subpart include administrative hearings concerning violations of all provisions of this part. Unless otherwise specified, the procedures described herein apply to both hearings concerning the violation of the provisions contained in Subpart E and hearing concerning the violation of the provisions contained in Subparts B, D and F.

### § 51.201 Liberal construction.

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Federal Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

### § 51.202 Reasonable notice and opportunity for hearing.

Whenever the Director has reason to believe that a recipient government has failed to comply with any provision of the Act or the regulations contained in this part, the Director shall give reasonable notice and opportunity for a hearing to such government as required by the pertinent procedural provisions of Subparts A, E or G prior to the invocation of any sanction available under the Act. The sanctions for violation of the provisions of the Act include: Repayment, withholding, or reduction in the amount of an entitlement of a recipient government which is required for a violation of the provisions of Subparts B, D and F, or suspension or termination of the entitlement payments for violations of the provisions of Subpart E.

### § 51.203 Opportunity for compliance.

(a) *In general.* Except in proceedings involving willfulness or those in which the public interest requires otherwise, an administrative hearing under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient government in writing and an opportunity has been given to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part.

(b) *Opportunity for compliance, under provisions other than Subpart E.* The opportunity for compliance will be given in accordance with the procedures for effecting compliance contained in § 51.3 for violations of Subparts B, D and F. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as specified by the Director pursuant to § 51.3 of this part, an administrative hearing may be initiated by the Director.

(c) *Opportunity for compliance under Subpart E.* For violations of the provisions of Subpart E, entitlement funds shall be immediately suspended after notification of a determination of noncompliance pursuant to § 51.65, unless a recipient government specifically and timely requests an administrative hearing pursuant to § 51.65. If the recipient government is a unit of local government, a copy of the finding and determination letters shall be transmitted by the Director to the Governor of the State in which the unit of local government is located.

### § 51.204 Institution of administrative hearing.

(a) *Institution of an administrative hearing other than under Subpart E.* An administrative hearing to require repayment of funds to the Director, or to withhold funds from subsequent entitlement payments, or to reduce the entitlement of a recipient government for violations of the provisions of Subparts B, D, or F, shall be instituted by the Director through a complaint which names the recipient government as the respondent.

(b) *Institution of an administrative hearing under Subpart E.* An administrative hearing under Subpart E of this part shall be instituted at the timely request of the recipient government, pursuant to § 51.65 of Subpart E, within 30 days of receipt of that request by the Director. After receiving the request for a hearing, the Director shall file a complaint which names the recipient government as the respondent.

### § 51.205 Complaint for administrative hearing.

Administrative complaints shall include the following:

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informed the respondent of the charges against it.

(b) *Demand for answer.* Notification shall be given in the complaint of the time and place within which the recipient government shall file its answer, which time shall be not less than 30 days from the date of service of the complaint for hearings concerning provisions other than Subpart E. Where the hearing concerns provisions under Subpart E, the answer shall be required to be filed within 10 days of the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the recipient government in the event it fails to file its answer as required.

### § 51.206 Service of complaint and other papers.

(a) *Service of complaint.* The complaint or a true copy thereof may be served upon the recipient government by first-class mail or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service. Where the hearing concerns the provisions of Subpart E, the complaint shall be served upon the recipient government within seven days of receipt of the request for a hearing from the recipient government.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a party or upon its attorney of record by first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with an administrative hearing under this subpart, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.207(a).

### § 51.207 Answer; referral to administrative law judge.

(a) *Filing.* The recipient government's answer shall be filed in writing within the time specified in the complaint, unless a recipient government's request for an extension of time is granted by the Director. The recipient government's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the recipient government shall not deny a material allegation in the complaint which it knows to be true, nor shall a recipient government state that it is without sufficient information to form a belief when in fact it possesses such information. The recipient government may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need to be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except where the time for answer is extended under paragraph (a) of this section, may constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge may make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the recipient government's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Director may file a reply in her discretion and shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the recipient government to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

### § 51.208 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading, and the evidence adduced in support of the pleadings, the administrative law judge may order or authorize amendment of a pleading to conform to the evidence: *Provided,* That, the party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations contained in the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

### § 51.209 Representation.

A recipient government may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Director shall be represented by the General Counsel of the Treasury, or a person or persons designated by the General Counsel.

### § 51.210 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by Section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests. Prior to the close of the hearing, no appeal shall be made from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing, the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(4) Adopt and modify rules of procedure from time-to-time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written arguments on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform the acts and take the measures necessary or appropriate to promote the efficient conduct of any proceeding; and

(10) Make initial findings of fact and conclusions of law and issue a decision.

### § 51.211 Administrative hearings.

(a) *Administrative hearing for violations other than Subpart E.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to Section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(b) *Administrative hearing under Subpart E.* A hearing requested by a recipient government under Subpart E pursuant to § 51.65 shall be commenced by the Director within 30 days of receipt of such request and shall be held before an administrative law judge. Testimony shall be given under oath or affirmation and shall consist of two proceedings as follows:

(1) The first proceeding shall be in the nature of a summary hearing conducted in accordance with the provisions of this subpart, similar to a judicial hearing on a preliminary injunction. All parties shall have an opportunity to present their respective positions. The administrative law judge shall issue a preliminary finding as to whether the recipient government is likely to prevail, which finding shall be based upon the record developed throughout this proceeding, and shall be issued within 30 days after commencement of the summary hearing.

(2) The second proceeding, if necessary, shall be a full hearing on the merits conducted in accordance with the provisions of this subpart and shall result in the initial decision of the administrative law judge. The initial decision of the administrative law judge shall be based upon the complete record of all the evidence developed throughout the hearing.

(c) *Failure to appear.* If a recipient government fails to appear at a hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make appropriate findings and issue a decision against the respondent by default.

(d) *Waiver of hearing.* A recipient government may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive a hearing. In such event, the administrative law judge may make appropriate findings and issue a decision based upon pleadings and the record before her, together with such documentary evidence properly submitted. The decision shall plainly show that the respondent waived the hearing.

### § 51.212 Stipulations.

The administrative law judge shall, prior to or at the beginning of a hearing, require the parties to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no genuine issue of material fact. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which she deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

### § 51.213 Evidence.

(a) *In general.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible; *Provided That* the administrative law judge may relax such rules in any hearing when in her judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.214 and the deposition may be admitted as evidence.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original, provided that such documents, records and papers are proven to represent the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any condition she deems proper. An original document, paper or record need not be introduced, and a copy duly certified (pursuant to paragraph (c) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

### § 51.214 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Director or the respondent or their duly authorized representative. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes, except in proceedings under Subpart E in which case depositions may be taken upon not less than 10 days written notice. Such written notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of written notice may be waived by the parties in writing, or may be modified by the administrative law judge. Depositions may be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 7 calendar days before the date on which such interrogatories or cross-interrogatories are scheduled to be answered, unless the parties mutually agree or the administrative law judge rules otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose request the deposition is taken.

### § 51.215 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings. A transcript of the proceedings and evidence at a hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that said reporter will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of her ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of the deposition will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

### § 51.216 Proposed findings and conclusions.

Except in cases where a recipient government has failed to answer the complaint, has failed to appear at the hearing, or has waived the hearing, the administrative law judge shall, prior to making the preliminary finding under § 51.217 for hearings under Subpart E or the initial decision, give the parties a reasonable opportunity to submit proposed findings of fact and conclusions of law and any supporting reasons.

### § 51.217 Preliminary finding (for hearings under Subpart E).

(a) *Suspension of funding or termination of payment by administrative law judge.* (1) Within 30 days after the commencement of a summary hearing under § 51.211(b)(1), the administrative law judge conducting the hearing shall, on the record of evidence presented, issue a preliminary finding as to whether the recipient government has failed to comply with the provisions of this part. If the preliminary finding of the administrative law judge is to the effect that the recipient government is not likely to prevail on the issues to which the hearing pertained, the Director shall immediately suspend the further payment of entitlement funds to the recipient government.

(2) Such suspension shall remain in effect until a compliance agreement is entered into by the recipient government and the Director. A preliminary finding by the administrative law judge is not appealable by the recipient government. After the completion of the full hearing on the merits, the administrative law judge shall make findings and a decision based upon the complete record of the evidence. If the administrative law judge issues a decision that the recipient government has failed to comply with the provisions of this part, then the recipient government must enter into a compliance agreement with the Director before the 31st day after the decision. If no compliance agreement is entered into, the Director shall, upon the initial decision of the administrative law judge, indefinitely suspend the payment of entitlement funds to the recipient government, continue the suspension invoked under paragraph (a)(1) of this section, or terminate the payment of entitlement funds if ordered to terminate by the administrative law judge.

(b) *Resumption of funding; finding of compliance by administrative law judge.* A determination by the administrative law judge that the recipient government has complied with the provisions of this part, will terminate a suspension or termination of entitlement funds by the Director pursuant to paragraph (a) of this section. The Director shall, as promptly as feasible, pay over to the recipient government all entitlement funds the payment of which were suspended.

### § 51.218 Initial decision of the administrative law judge.

(a) *In general.* As soon as practicable after the conclusion of a full hearing on the merits under § 51.211(b)(2) and the receipt of any proposed findings of fact and conclusions of law timely submitted by the parties, but in no event later than 30 days after the conclusion of the hearing, the administrative law judge shall, in accordance with 5 U.S.C. Section 557, make the initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions of law reached upon all the material issues of fact, law or discretion presented on the record, as well as the reasons or basis for them. The decision shall not, however, order any particular remedy for the noncompliance, but shall only state whether the recipient government has failed to comply with the provisions of the statute. The nature of the remedy shall be within the discretion of the Director, based upon the findings of fact and conclusions of law of the administrative law judge. The initial decision shall further provide for one or more of the following:

(1) With respect to proceedings under Subpart E—

(i) A determination that the recipient government has failed to comply with the provisions of Subpart E. This determination shall result in the immediate suspension of the further payment of entitlement funds by the Director or continued suspension of such funds if they had been previously suspended pursuant to a preliminary finding by the administrative law judge as described in § 51.217 of this subpart.

(ii) An order pursuant to paragraph (a), that the payment of entitlement funds to the recipient government is terminated.

(iii) A determination that the recipient government has proven compliance with the provisions of Subpart E. This determination should cause the Director to immediately resume payments, if they had been suspended pursuant to § 51.217.

(2) With respect to proceedings other than under Subpart E—

(i) That the Director withhold subsequent entitlement payments to the respondent until appropriate corrective action (as determined by the Director) is taken; and

(ii) That the entitlement of a recipient government be reduced and the amount of such reduction to be withheld from subsequent entitlement payments.

(3) That the proceedings be dismissed.

(b) *Suspension of funding.* For violations of the provisions of Subpart E, if the initial decision is against the recipient government, the Director shall suspend the payment of entitlement funds (or continued suspension of funds suspended after a preliminary finding of the administrative law judge). The entitlement payment to the recipient government shall be suspended by the Director until the recipient government enters into a compliance agreement which satisfies the Director that appropriate corrective action has been taken and there is full compliance with the provisions of Subpart E.

(c) *Order of termination of funding.* For violations of the provisions of Subpart E, if the order of the administrative law judge against the recipient government is for termination of entitlement funds, the entitlement payment to the recipient government shall be terminated by the Director. The recipient government may resume participation in the program in the future if it enters into a compliance agreement which satisfies the Director that appropriate corrective action has been taken and there is full compliance with the provisions of Subpart E. Entitlement funds terminated shall be returned to the general fund of the Department and will not be available to the recipient government, unless the order of termination is reversed by an appellate tribunal.

(d) *Withholding of funding.* For violations of provisions other than Subpart E, if the initial decision of the administrative law judge or the Secretary is against the recipient government the Director shall withhold the further payment of entitlement funds to the recipient government. The amounts shall be withheld by the Director after notice to the chief executive officer of the recipient government. The notice shall state that if the recipient government fails to take corrective action within 60 days after receipt of the notice, the further payment of entitlement payments will be withheld until the Director is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part.

### § 51.219 Certification and transmittal of record and decision.

After reaching the initial decision, the administrative law judge shall certify the complete record and immediately forward the certified record, together with a certified copy of the initial decision, to the Director. The administrative law judge shall also serve a copy of the initial decision by certified mail upon the chief executive officer of the recipient government or upon its attorney of record.

### § 51.220 What constitutes the record?

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together will all findings, decisions and orders, shall constitute the exclusive record in the matter.

### § 51.221 Procedure on review of decision of administrative law judge.

(a) *Appeal to the Secretary.* (1) *By the recipient government.* In all proceedings, within 30 days from the date of the initial decision and order of the administrative law judge, the recipient government may appeal to the Secretary by filing its exceptions to the initial decision and the reasons for the exceptions. The recipient government shall transmit a copy of its appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within 30 days from receipt of the recipient government's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the recipient government or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge within 90 days from the date of the last filing.

(2) *By the Director of the Office of Revenue Sharing.* In all proceedings, the Director may, on her own motion, within 45 days after the initial decision, serve on the recipient government by certified mail a notice that the decision will be appealed to the Secretary. Within 30 days from such notice, the Director through counsel shall file with the Secretary exceptions to the initial decision and supporting reasons therefor. A copy of the exceptions shall be transmitted to the recipient government or its counsel of record, who, within 30 days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or counsel for ORS. Upon the filing of a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge within 90 days from the date of the last filing.

(b) *Review by Secretary.* In all proceedings, in the absence of appeal by either party, the Secretary may elect to review the initial decision of the administrative law judge. Within 45 days of the initial decision, the Secretary shall serve on the recipient government by certified mail, a notice that an election has been made to review the decision. As part of the review, the Secretary may request briefs from each party within 30 days of the date of notice of the review. Upon filing of the briefs, the Secretary shall make the final agency decision on the record of the administrative law judge within 90 days from the date of the last filing.

(c) *Decision of the Secretary.* On appeal or review of the initial decision of the administrative law judge, the Secretary shall make the final agency decision, after review of the record or such portions thereof as may be cited by the parties, to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the recipient government or its counsel of record.

### § 51.222 Effect of absence of appeal or review of initial decision of administrative law judge.

In the absence of either exceptions by the recipient government, a notice of appeal by the Director or review by the Secretary (where appropriate) within the time periods set forth in paragraphs (a), (b) or (c) of § 51.221, the initial decision of the administrative law judge shall become the final decision of the Department.

### § 51.223 Publicity of proceedings.

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available for inspection by the public as provided for in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

### § 51.224 Judicial review.

(a) *In general.* Actions taken as a result of administrative hearings pursuant to this subpart shall be subject to judicial review pursuant to Section 143 of Subtitle C of the Act.

(b) *Appeal by the respondent.* A respondent may appeal the initial decision of the administrative law judge which has become final, or a final order of the Secretary pursuant to §§ 51.221(c) or 51.222, to the U.S. Court of Appeals, as provided by law.

(c) *Cross-appeal by the Director.* In the event a recipient government appeals, the Director may cross-appeal any issues decided adversely to the ORS by the administrative law judge. Issues decided adversely to the ORS by the Secretary may not be appealed by the Director.

(d) *The record.* The Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original record shall then be filed with the Court of Appeals which has jurisdiction.

## APPENDIX—SECTION-BY-SECTION ANALYSIS OF FINAL REGULATIONS

### Subpart A—General Information Section 51.0 Scope and Application of Regulation

Paragraph (a) of this section describes the statutes which these regulations implement. This paragraph is amended to include the State and Local Fiscal Assistance Act Amendments of 1980.

Paragraph (b) of this section is revised to reflect the most recent amendments to the Revenue Sharing Act. One commenter on the 1979 proposed rule objected to the application of January 1, 1977 date to discrimination on the basis of handicap. This date is imposed by the 1976 Amendments to the Revenue Sharing Act and is, therefore, not within the discretion of the Office of Revenue Sharing (ORS).

*Section 51.1—Establishment of ORS.* This section is amended to reflect the State and Local Fiscal Assistance Act Amendments of 1980.

*Section 51.2—Definitions.* Paragraph (a) which defines "Act" is amended to reflect the State and Local Fiscal Assistance Act Amendments of 1980.

Paragraph (e) which defines "Entitlement" is eliminated because it was unnecessary. The definition "Entitlement funds" is redesignated paragraph (e) and is amended to make it clear that interest earned on revenue sharing funds prior to their expenditure by recipient governments is subject to the requirements of the Revenue Sharing Act.

Paragraph (g) which defines "Entitlement period" is redesignated paragraph (f) and amended to more accurately describe the fourteen entitlement periods during which recipient governments have received or will receive revenue sharing funds.

A new paragraph (g) which defines "Funded" was added by the 1979 proposed rule to Subpart A, as well as subpart E, because the term has general applicability to all provisions of this part.

The definitions of "Generally accepted auditing standards" and "Independent public accountants" in paragraphs (h) and (j) respectively, have been placed in a new definition section in subpart F. The definitions of "Governor" and "Indian tribes and Alaskan native villages" are redesignated paragraphs (h) and (i) respectively.

The definition of "Lobbying" is redesignated paragraph (j) and is defined as personal solicitation of members of a legislative body to influence legislation regarding the Act. The definition includes solicitation of any legislative body (Federal, State or local) by a representative of the recipient government acting on behalf of the recipient government to influence the outcome of legislation concerning the provisions of the Revenue Sharing Act.

The definition of "Program and activity" is added to this section as a new paragraph (k). This definition also appears in Subpart E, concerning discrimination, but is generally applicable to all provisions of this part. The definition, presently contained in Section 51.51(c) of the regulations was amended on April 2, 1979 (44 FR 1919) to conform it with the definition contained regulations implementing the Crime Control and Safe Streets Act of 1976 (42 U.S.C. 3701 *et seq.*). The nondiscrimination provisions under that Act are substantially similar to those under the Revenue Sharing Act. The final rule amends the rule to encompass secondary recipients.

The definition of "Recipient government" is redesignated paragraph (1) and amended to reflect the fact that Indian tribes and Alaskan native villages are direct recipients of revenue sharing funds, but are not required to comply with certain specified provisions of the Act.

A new paragraph (m) defines "Secondary recipient." Section 51.4 of the current regulations states that any governmental unit or private entity to whom entitlement funds are transferred shall comply with the restrictions and prohibitions contained in the Act but does not define the term "transfer". The final rule defines "Secondary recipient" as any entity which receives entitlement funds by grant, contract or other arrangement for the purpose of providing a service the recipient government would otherwise provide or for the purpose of providing an entity with general financial assistance.

The secondary recipients include other governments, private nonprofit organizations and profit-making business which receive revenue sharing funds and use them in a manner which impacts on the citizens of the primary recipient government. The definition contained in the proposed rule included construction contractors as a secondary recipient. The rationale for the decision to include construction contractors as secondary recipients was that construction contractors could be considered to be providing a service, the construction of the building, which the the primary recipient government would otherwise have to provide. Several commenters on the 1979 proposed rule objected to the inclusion of construction contractors within the definition. They pointed out that it was more accurate to characterize a contract for the construction of a building as a purchase of an item, rather than the provision of a service. The commenters particularly objected to the application of the audit requirement to secondary recipients. The Director agrees with these comments and construction contractors have specifically been deleted from coverage of the definition.

*Section 51.3—Procedures for effecting compliance for violations other than subpart E.* This section was completely revised to provide better guidance concerning the procedures the ORS uses to achieve compliance where a recipient government in noncompliance with the provisions of the Act, other than of the nondiscrimination provisions contained in subpart E. The procedures described in this section apply to violations of the requirements, restrictions, and prohibitions contained in Subparts B, D and F of this part. The provisions of this regulation are, therefore, broad enough to apply to audit, as well as public participation or Davis-Bacon violations. Section 125 of the Act requires the Secretary to promulgate regulations establishing reasonable and specific time limits for the conduct of an investigation and issuance of a finding and for the conduct of compliance reviews and audits.

It is the position of the ORS that only Section 125(2) of the Act requring reasonable and specific time limits for the conduct of audits and reviews applies to provisions other than Subpart E. Accordingly, the issuance of a finding is not required within 90 days of receipt of a complaint or other information. The final regulation is designed to provide guidance without eliminating the flexibility needed to achieve compliance with varying violations of the Act.

Section 51.3(e) clarifies the procedures that will be used to achieve compliance where a recipient government has failed to submit an assurance, report or other information requested to determine compliance with the Act. The proposed rule has been amended to clarify that the Director has the discretion to determine whether or not to constructively waive the entitlement of a recipient government after delay of entitlement payments has failed to bring about compliance with reporting requirements. Entitlement funds constructively waived are not returned to a recipient government, but become a part of the entitlement of the next highest level of government eligible to receive such funds.

One commenter objected to the subparagraph (a)(2) which provides that the scope of the investigation is not limited to the administrative complaint where an investigation uncovers other violations of the law. The final regulation retains the provision because it is not reasonable to require the ORS to ignore violations uncovered during an investigation merely because they were not the subject of a complaint.

*Section 51.4—Transfer of funds to secondary recipients.* This section was amended to clarify the application to secondary recipients of the prohibitions and restriction, contained in the Act and regulations. The final regulation provides additional guidance in response to comment that the primary recipient government's responsibility for the secondary recipient compliance was unclear. The regulation attempts to make it clear that the primary recipient must inform the secondary recipient of the requirements attached to the expenditure of revenue sharing funds, monitor compliance with those requirements and attempt to resolve areas of noncompliance found by the ORS. Where compliance cannot be achieved, the Director may require the recipient government to withdraw funding of the secondary recipient. One commenter asked what portion of revenue sharing funds would be endangered if the ORS took enforcement action against the recipient government. The Act authorizes only the full withholding of the primary recipient's entitlement funds, after opportunity for a hearing, until compliance is achieved.

*Section 51.5—Time periods (deleted).* This section was added to the proposed rule to clarify the time periods for particular events described in the procedures for effecting compliance. All time periods described in the Act and regulations begin to run with receipt of notice of the event. Paragraph (b) of this section provided a distinction between calendar or working days. A number of commenters objected particularly to this paragraph as being confusing and unnecessary. The entire section is, therefore, deleted. Time periods will continue to begin to run with receipt of notice. References to all time periods, however, will remain to calendar days, unless it is specifically provided otherwise.

*Section 51.5—Effect of State or local law.* Proposed Section 51.6 is redesignated Section 51.5. The final rule adds a new provision to the regulations which states the provisions of the supremacy clause of the U.S. Constitution. Several commenters felt that this might place some recipient governments in the middle of a conflict between the Federal government and a State government. If such situations occur, they will be handled on an individual basis in accordance with Constitutional law.

*Section 51.6—Applicability of other Federal laws.* Proposed § 51.7 is redesignated Section 51.6. This provision states that general Federal laws relating to Federal grant, loans, contracts and financial assistance programs are not applicable, unless specifically provided in the Revenue Sharing Act or regulations. It has always been the position of the ORS that only the Acts specifically mentioned within the Revenue Sharing Act are applicable to the revenue sharing program. This position has support in the case law. In *Carolina Action* v. *Simon,* (552 F. 2d 295, (1975)) the Court held that the National Environmental Policy Act (42 U.S.C. Sections 4321 *et seq.*) was not applicable to revenue sharing. In the latest case, *Goolsby* v. *Blumenthal,* (590 F. 2d 1369 (1979)), the Court held that the Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Sections 460 *et seq.*) was not applicable to revenue sharing.

The section also provides that the criminal code of the United States is applicable to criminal offenses relating to the expenditure of revenue sharing funds. One commenter objected to the fact that the effect of this provision was to exclude the General Revenue Sharing Program from the coverage of Title VI. The Revenue Sharing Act clearly contains procedures and substantive law that are distinct from those of Title VI, and it has long been held that the ORS is not a Title VI agency.

### Subpart B—Assurances, Reports, and Public Participation

*Section 51.10—Definitions.* The definitions of "Budget" and "Budget Summary" are revised for clarification. The definition of "Recipient government" is eliminated as redundant because it is included in § 51.2 of Subpart A. Current paragraph (f) which defines "Executive authority" is redesignated paragraph (e). New definitions of the terms "Impractical" and "Infeasible" are added as paragraphs (f) and (g) respectively. Current paragraphs (g), (h) and (i) which define "Legislative body," "presented" and "public hearing" respectively are redesignated paragraphs (i), (j) and (k). The definition of "Public hearing" is also revised to emphasize that all citizens of a jurisdiction must have access to hearings concerning revenue sharing funds. Paragraphs (j) and (l) which define "Publication" and "Use report" are redesignated (l) and (m) respectively.

*Section 51.11—Reports to the Director; assurances; procedure for effecting compliance.* This section is amended by the addition of a new paragraph (b) which sets forth the extent of the record-keeping requirements concerning documentation establishing compliance with the public participation requirements of this subpart. Such documentation shall be retained by a recipient government for period of at least one year. Current paragraph (b) entitled "Requisite assurances for receipt of entitlement funds" is redesignated paragraph (c). Current paragraph (c) entitled "Procedure for effecting compliance" is redesignated paragraph (d) and amended to distinguish between the procedures for effecting compliance for public hearing violations and the procedures for effecting compliance for reporting and assurance violations.

*Section 51.13—Proposed use hearing.* Paragraph (b) is amended to improve clarity. Section 51.13(c) is amended to clarify that a waiver of the proposed use hearing must be requested by the recipient government and the request must be accompanied by a cost estimate of the unavoidable expenses. Further, the waiver must be approved by the Director prior to the appropriation of revenue sharing funds by the recipient government. Section 51.13(c) is also amended to add an additional waiver of the hearing and publication requirements. Because the Revenue Sharing program was renewed several months after September 30, 1980, some recipient governments enacting budgets for fiscal year 1981, may have had to estimate the amount of funds they would receive during the coming fiscal year without the usual guidance from the ORS as to the amount of entitlement funds they might be expected to receive. For this reason, Section 2(e) of the 1980 Amendments provides that a recipient government, which conducted hearings of the proposed uses of revenue sharing funds prior to December 28, 1980 (the enactment date of the 1980 Amendments) using reasonable projections as to the amount of those funds, would not be considered to have violated the provisions of the Act. New §§ 51.13(c)(3) and 51.14(f) provide that where hearings have been held based upon reasonable estimates, additional hearings would not be required concerning the entitlement funds not subjected to the budget process for entitlement period twelve. This provision is in no way meant to exempt recipient governments from compliance with the public hearing requirements for subsequent entitlement periods.

*Section 51.14—Budget hearing.* Paragraph (a) of this section is revised to emphasize that public hearings shall be open to all U.S. citizens. This paragraph further emphasizes that these hearings must actually be conducted by the legislative body. Mere presence of one individual of the legislative body at a hearing, for example, would not be sufficient.

Paragraph (b) revises the provision for an alternative procedure for a budget hearing to eliminate the requirement that the recipient government submit a written assurance prior to the use of the alternative procedure. The State or local public hearing procedure may be used automatically and compliance with those procedures need only be proved when questioned pursuant to a compliance review or a complaint.

Paragraph (e), "Waiver of newspaper publication, alternative forms," clarifies the requirements for the waiver of newspaper publication. Those requirements are the same as the requirements for the waiver of the proposed use hearing and publication.

Paragraph (f) entitled "Waiver of budget hearing and publication requirements," sets forth the new waiver created by the 1980 Amendments to the Revenue Sharing Act. Current paragraphs (f) and (g) are redesignated (g) and (h).

*Section 51.15—Amendments or modification to enacted budget.* This section is amended to clarify what constitutes a major change to an enacted budget. To be a major change, the modification to the budget must involve at least a cumulative amount of $2,000, and also must represent at least 25% of the revenue sharing funds in the recipient government's budget as originally enacted.

*Section 51.18—Legal notice rules not applicable.* This section is amended to provide that newspaper publication required with respect to public hearings and the use report may be in the form of a newspaper advertisement of article. The publication must, however, include all of the required information.

### Subpart C—Computation and Adjustment of Entitlement Funds

*Section 51.20—Data.* Section 51.20(c) is amended to clarify the special rule concerning intergovernmental transfers for less than one-year entitlement periods. Subparagraph (b)(3) of this section is also amended to eliminate the reference to use of other data where data are determined to be "otherwise inadequate to provide for equitable allocations." The Director may use alternative data only when the data provided by the Bureau of the Census are not current or comprehensive enough to provide for equitable allocations.

*Section 51.21—Data affected by a major disaster.* The final rule amends § 51.21(c), "Eligibility requirements," to clarify that at the end of the 60-month period the data used for the initial allocation of revenue sharing funds will also be used for the final allocation of these funds. A new § 51.21(g) is added to provide that the post-disaster data factor will be used for the first entitlement period after the end of the 60-month period.

*Section 51.23—Dates for finalizing data.* Current § 51.23 entitled "Date for determination of allocations" is retitled "Date for finalizing data" and reorganized. The final rule creates a new paragraph (b) entitled "initial allocation out of the last sentence in paragraph (a). Current paragraph (b) entitled "Time limitation and minimum adjustment" has been added to § 51.29 "Notification and adjustment of data" and retitled "Time limit for data changes."

*Section 51.24—Boundary changes, governmental reorganizations.* Paragraph (b) of this section entitled "New units of local government" is amended to describe what a new unit of local government must do to establish its eligibility to receive entitlement funds. Paragraph (c) entitled, "Dissolution of units of local government" is amended to point out the fact that entitlement funds, due to a government which has been dissolved, and which would normally go to the next higher unit of local government, will be placed in the appropriate State reserve for later distribution if that higher government cannot receive the money.

*Section 51.25—Waiver of entitlement; nondelivery of checks; insufficient data.* Paragraph (a) of this section is amended to specify that entitlement funds waived shall become a part of the entitlement of the next higher unit of local government and if that is not proper, the funds shall be placed in the appropriate State adjustment reserve.

Section 51.25(b) "Constructive waiver," clarifies that a recipient government may be constructively waived for failure to comply with the reporting and assurance requirements of the Act and regulations. The reporting requirement includes submission of reports and other information upon request of the Director or a designate to determine compliance with the provisions of Subparts B, D, E or F. This section is also amended to give the Director the discretion to delay implementing constructive waiver procedures where it is determined that additional time should be given a recipient government to submit the required information.

*Section 51.26—Reservation of funds and adjustment of entitlement.* Paragraph (a) of this section is amended to emphasize the fact that there is a separate State obligated adjustment reserve for each State area. Paragraph (b) of this section is amended to add new subparagraphs (b) (1) and (2) to clarify the circumstances under which interim negative and positive adjustments will occur. Paragraph (b) (5) is also amended to reflect the fact that there are separate reserves for each State.

*Section 51.27—State to maintain transfers to local governments.* The final rule amends this section to remove all reference to pre-January 1, 1977 rules because they are obsolete and is further reorganized for added clarity. The final rule adds a § 51.27(e), "Adjustment where new taxing powers are conferred," which clarifies the effect upon the States of conferring new taxing powers upon local governments.

Current § 51.27(k), "Report by Governor," becomes a § 51.27(g) "Computation by the ORS". The new section would reflect the current operating procedure of obtaining data concerning maintenance of effort from the Bureau of the Census.

*Section 51.28—"Optional Formula".* The final rule amends § 51.28 entitled "Optional formula" to update the time period within which a State may apply for use of an optional formula. The date in § 51.28(a)(3)(iii) is changed from September 30, 1980 to September 30, 1983, the end of the last entitlement period authorized by the 1980 Amendments.

*Section 51.29—Notification and adjustment of data.* This section is retitled "Notification and adjustment of data" and amended by the addition of a new paragraph (b), which is taken from § 51.23. Together these paragraphs specify that recipient governments will be notified of the data to be used in computing allocations of entitlement funds and given the opportunity to request adjustments in data factors if such requests are made within a year of the end of the entitlement period for which the data are applicable.

*Section 51.30—Adjustment of Maximum and Minimum per Capita Entitlement; 100 Percent Criterion.* The final rule amends paragraphs (a) and (b) of this section to eliminate the reference to inclusion of the States in the formula for determining constraints on allocations to local governments. The final rule also adds new subsections which set forth the methods by which the amounts described in this section, which some local governments cannot receive due to the formula constraints, would be reallocated within States to eligible local governments.

*Section 51.31—Separate Law Enforcement Officers.* The final rule amends § 51.31 "Separate law enforcement officers" to set forth the source and percentage of direct funding for the separate law enforcement officers in the State of Louisiana during entitlement periods in which funds are not appropriated for State governments.

*Section 51.32—Population.* The final rule adds a new § 51.32 entitled "Population." Paragraph (a) restates the current definition of population." Paragraph (b) implements the 1980 Amendments regarding the potential use of population undercount adustments when provided by the Bureau of the Census. One commenter objected to this provision. The 1980 Amendments to the Act however, require that the request be made. The Bureau of the Census has informed the ORS that at this time it is not statistically feasible to make such estimates. Paragraph (c) implements the 1980 Amendments regarding population adjustments due to legal immigrants entering the country within six months after the 1980 Census.

Paragraph (d) updates the definition of population for Indian tribes and Alaskan native villages and describes the population data of Oklahoma Indian governments. Oklahoma Indian governments, except the Osage Tribal Council, do not have current reservation boundaries within which population can be determined and the Bureau of the Census cannot determine the Indian population on Oklahoma Indian trust lands since they do not match the geography of Census enumeration districts. Since Oklahoma Indian tribes do not now have reservations, the Bureau of Indian Affairs has advised that it is unlikely that Indian governing bodies in Oklahoma would be providing governmental services to anyone but Indians identified with the tribe of that governing body. Therefore, the population of Oklahoma Indian tribes for revenue sharing purposes will include only Indians and their spouses and children identified with the tribe of the Indian governing body, who are living within the boundaries of the historic areas in those Oklahoma county areas where the tribe had a reservation at the time of the allotment of Oklahoma lands.

One of the commenters on this section pointed out that the definition specifically excluded American Indians living in cities and towns only with respect to American Indians living in the State of Oklahoma. The commenter asked for clarification on this issue and expressed the preference that if the definition was to be applied to other areas, it would be phased in gradually because a sharp reduction in the allocation of entitlement funds to a particular Indian tribe might result. Subparagraph (d)(1)(A) of the definition has been amended to specifically subtract American Indians living in cities and towns as was originally intended by the definition. While the failure to count American Indians living in cities and towns may result in a reduction of the entitlement for some Indian tribes, the Act requires that population estimates provided by the Bureau of the Census be used in making allocations. The Bureau of the Census will not count Indians living in cities and towns as part of the population. To do so would result in double counting.

### Subpart D—Prohibitions and Restrictions on Use of Funds

*Section 51.40—Matching funds.* The amendments to the Revenue Sharing Act in 1976 repealed the prohibition against the use of revenue sharing funds for matching purposes. Since a recipient government has 24 months in which to use, obligate or appropriate revenue sharing funds, revenue sharing funds received in the last quarter of 1976 may not have been spent until after 1978. Accordingly, the current regulations maintain the restrictions concerning matching with the proviso that they do not apply to revenue sharing funds received after January 1, 1977. Since all pre-1977 funds are likely to have been spent, the final rule eliminates the provision and merely states that revenue sharing funds may be used for matching purposes after January 1, 1977.

*Section 51.41—Permissible expenditures for units of local government.* The 1976 amendments to the Act also eliminated the priority expenditure restrictions for local governments. For the same reason as stated above with respect to matching, the final rule states that revenue sharing funds may be used by recipient governments for any purpose permissible under State or local law.

*Section 51.42—Wage rate and labor standards.* Several commenters on the 1979 proposed rule objected to the inclusion of renovation and repair projects with construction projects covered by the Davis-Bacon Act. The references to renovation or repair were included in the proposed rule after reviewing the definition of "construction project" in the regulations implementing the Davis-Bacon Act (29 CFR 51.2(g)). This definition in part provides that: "the terms "Construction," * * * "Completion," or "Repair" means all types of work done on a particular building or work done at the site thereof or * * * including without limitation, altering, remodeling, painting and decorating, * * *" The inclusion of the words "renovation" and "repair" was an attempt to conform the revenue sharing regulations to the Labor Department definition. The final regulation deletes the reference and makes it clear that § 51.42 uses the term "Construction project" as it is defined in 29 CFR 5.2(g).

*Section 51.43—Restriction on expenditures by Indian tribes and Alaskan native villages (deleted).* This section of the current regulations was issued to implement Section 123(a)(8) of the Act. This provision was eliminated by the 1980 Amendments to the Act and, is therefore, deleted from the regulations.

*Section 51.43—Lobbying.* Section 51.44 "Lobbying" is a redesignated § 51.43.

*Section 51.44—Use of entitlement funds for debt retirement.* Section 51.45 "Use of entitlement funds for debt retirement" is redesignated Section 51.44. The final rule also amends this section to clarify the current rule that the restrictions on use of entitlement funds for debt retirement have been eliminated, except that the proceeds of indebtedness must have been spent in compliance with the provisions of Subpart D and E.

*Section 51.45—Use of entitlement funds in accordance with State or local law.* This section is moved from Sections 51.100(c) of the current regulations. The provision is also qualified to make it clear that State or local laws which conflict with the Revenue Sharing Act are not a defense to violations of the Act due to the Supremacy Clause of the United States Constitution. Several commenters objected to the qualification for the same reasons that they objected to § 51.5 "Effect of State or local law." The comments were not accepted for the same reasons described above. One commenter requested that the word "procedure" be removed from the phrase of the regulations "State or local laws or procedures." Section 123(a)(4) of the Act, however, specifically refers to both laws and procedures. Therefore, this section was not changed.

*Section 51.46—Procedures for effecting compliance.* A new § 51.46 is added to the final regulation as a companion provision to §§ 51.11(d), and 51.109 to cross-reference the procedures for effecting compliance with the substantive and reporting requirements of the Act. Section 51.3 of Subpart A of the Act contains those procedures to be used to achieve compliance where violations of the provisions of Subpart D are found.

### Subpart E—Nondiscrimination by States and Local Governments Receiving Entitlement Funds

*Section 51.51—Definitions.* (1) The definition of "Attorney General" was amended to remove the reference to the Assistant Attorney General for Civil Rights because the reference was determined to be unnecessary.

(2) The definition of "compliance review" was amended to emphasize that compliance reviews are to be initiated at the discretion of the Director.

(3) The definition of "determination" was amended for clarification purposes.

(4) The definition of "facility" was amended to expand the examples in a manner consistent with the HEW regulations (45 CFR 84.3(i)).

(5) The definition of "program and activity" was amended to clarify that the concept of program or activity is linked to that of funding as per discussion of § 51.2(g) in subpart A.

*Section 51.52—Discrimination prohibited.* The general prohibitions have been reorganized to provide additional clarity, particularly with respect to what is a prohibited practice concerning the provision of services, employment, and access to facilities.

Section 51.52(b)(6) concerning the use of height or weight requirements was amended in response to comments. One commenter stated that the section did not follow the Uniform Guidelines on Employee Selection Procedures which have been adopted by the Treasury Department. The section was amended to clarify that selection devices, validated pursuant to the Uniform Guidelines may be used even if they have an adverse impact upon a protected class.

One commenter suggested that reference should be made to the sensory impaired with respect to employee selection devices. The Director declines to add references to specific handicaps to these general examples of prohibited discrimination. Discrimination against the handicapped in the use of employee selection devices is specifically covered in § 51.55(i) of the interim handicapped discrimination regulations.

With respect to § 51.52(c) "Exemptions," one commenter complained that § 51.52(c)(2), which provides an exemption where a recipient government proves by clear and convincing evidence that a particular program or activity was not funded by revenue sharing funds, provided recipient governments with a loophole. The Director has no discretion in this matter because this exemption is set forth in Section 122(a)(2)(A) of the Act. Clear and convincing evidence is a very high legal standard, however, and the burden is on the recipient government to prove it to the satisfaction of the Director.

*Section 51.53—Employment discrimination.* One commenter suggested that handicapped and age discrimination be added to this section. This section is not meant to apply to handicapped and age discrimination, which are best handled separately. Section 51.55(g) of the final regulations covers employment discrimination on the basis of handicap. The Revenue Sharing Act does not cover employment discrimination on the basis of age.

Proposed § 51.53(b) of the proposed rule entitled "Uniform Guidelines on Employee Section Procedures" was amended to clarify that a violation of the Guidelines violates these regulations.

Section 51.53(c) of the proposed rule entitled, "Recruitment practices of recipient governments," has been deleted and combined with the provision for self-review.

Proposed § 51.53(d) "Preemployment inquiries" was redesignated § 51.53(c) and amended in response to comments to be consistent with the Uniform Guidelines.

Proposed § 51.53(d) entitled, "Self-review," was amended to clarify that recipient governments are encouraged to voluntarily review all of their employment practices, including their recruitment practices and should undertake affirmative action where practices that are not in compliance with the Uniform Guidelines or these regulations are discovered.

*Section 51.55—Nondiscrimination on basis of handicap.* Section 51.55, "Discrimination on the basis of handicap," was published in the FEDERAL REGISTER on January 5, 1981 (46 FR 1120), it is currently in interim form (46 FR 41047). Certain provisions of this regulation remain deferred at this time, as is indicated in the regulation and the section-by-section analysis below. Once the government-wide Guidelines have been revised by the Department of Justice, those provisions, currently, deferred, which remain consistent with the Guidelines will be given effect. Those provisions which are determined to be inconsistent with the new Guidelines, whether currently in effect or deferred, will be deleted permanently.

Most of the approximately 50 comments on the 1979 proposed regulations concerned discrimination on the basis of handicap, as provided in Section 504 of the Rehabilitation Act of 1973. The majority of the comments expressed concern about the cost of compliance and objected to specific provisions such as the definition of handicapped individual, the self-evaluation requirement and the accessibility requirements. The Department has little discretion contained in these regulations. Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," requires Federal departments and agencies with Section 504 responsibility to issue regulations consistent with the standards and procedures established by HEW. Comments requesting elimination of or major revisions to these provisions were not acted upon due to the requirements of the Executive Order, which was issued to ensure consistent Federal enforcement of Section 504. The administrative provisions, such as the self-evaluation requirement have, however, been deferred and will not take effect until after the completion of the review of the HEW Guidelines. Revisions have primarily been made for clarification purposes and in some instances to make the substantive requirements conform more closely with the requirements for the General Revenue Sharing program.

One such revision is that all references in the proposed rule to special provisions for small recipient governments as those employing fewer than 15 employees have been changed to those receiving $25,000 or more in entitlement funds in each entitlement period. The reference to fewer than 15 employees has little relevance for the General Revenue Sharing Program which unlike grant programs, provides financial assistance to States and local governments, as opposed to particular departments and agencies or even private entities. The number of recipient governments which employ fewer than 15 persons is much less than the number which receives less than $25,000 in entitlement funds. Further, the independent audit requirements in Section 123(c) of the Revenue Sharing Act exempt local governments receiving less than $25,000 in entitlement funds. In the interest of consistency with this Congressional guidance, the General Revenue Sharing Program's final regulations prohibiting discrimination on the basis of handicap, should also incorporate the $25,000 standard.

Section 51.55(b) entitled, "General prohibitions with respect to discrimination against a qualified handicapped individual" contains the prohibitions against discrimination in the provision of services. Sections 51.55(b)(1) (iii) and (iv) were amended in response to comments that the provisions did not provide sufficient guidance concerning how recipients can make communications and services available to persons with impaired sensory, manual and speaking skills. Examples of methods were added to the regulations. Section 51.55(b)(1)(v) was deleted and a new § 51.55(b)(4) was added to expand the discussion of how to provide appropriate auxiliary aids to individuals with impaired sensory, manual and speaking skills. It is noted that auxiliary aids must be provided only at the request of the handicapped individual. Further, recipient governments must consult with the individual to determine the most appropriate auxiliary aids to be used. It is expected that requiring such aids only upon request, as recommended by organizations representing the handicapped, will reduce the cost of providing handicapped individuals with access to programs and activities. It will do so in a manner that will meet as closely as possible the individual needs of the handicapped.

Section 51.55(b)(1)(iv), which requires that the public hearings required under the Act and regulations be accessible to the handicapped, was amended in response to comments as to how such hearings can be made more accessible.

Proposed §§ 51.55(b)(1) (vi), (vii) and (viii) are redesignated Section 51.55(b)(1) (v), (vi) and (vii). Further, § 51.55(b)(1)(ix) has been redesignated § 51.55(b)(1)(viii). One commenter suggested that subparagraph (C) had been drafted too narrowly, prohibiting discrimination by a secondary recipient only if subject to the common administrative control of a recipient government. This subparagraph was amended to delete the reference to the secondary recipient situation and to clarify that where a recipient government funds a particular department in whole or in part with revenue sharing funds, subdivisions of that department are subject to these regulations.

Section 51.55(b)(1)(x) has been redesignated § 51.55(b)(1)(ix). The effective date of this subparagraph is deferred.

Section 51.55(c) "Self-evaluation" is deferred.

Section 51.55(d), "Designation of responsible employee and adoption of grievance procedure" is deferred.

Section 51.55(e), "Notice" is deferred.

Section 51.55(f), "Administrative requirements for small recipient governments" is deferred.

Section 51.55(g) "Employment discrimination" was amended to add a new subsection (g)(1)(iii) because it is one of the basic prohibitions contained in the HEW Guidelines and is therefore required to be contained in the regulation. Proposed §§ 51.55(g)(1) (iii) and (iv) are redesignated (iv) and (v). In response to comments, § 51.55(g)(1)(iv) was amended to include examples of how communication can be made available to the sensory impaired. Concerning this section, one commenter questioned whether a recipient government can be required to undertake affirmative action to employ the handicapped. Section 504 does not require affirmative action, as does Section 503. Section 504 requires only that recipient governments refrain from discriminating and undertake remedial action where discrimination is found.

Section 51.55(h), "Reasonable accommodation" was amended in response to comments to add examples of reasonable accommodation for the sensory impaired. The section was also amended to provide that the accommodations shall be made in consultation with the handicapped individual. One commenter requested greater specificity concerning what is required for reasonable accommodation. Considering the broadness of the definition of handicapped individual, what constitutes reasonable accommodation must be determined on a case-by-case basis and the regulation must remain broad. A new sentence is added to subsection (h)(3)(iii) to reflect the fact that an accommodation that causes inconvenience to the recipient government or result in some economic cost is not per se unreasonable.

Section 51.55(i), "Employment criteria and policies" as revised to conform subparagraph (2) more closely to the HEW regulations. Several comments suggested the application of the Uniform Guidelines on Employee Selection Procedures to these provisions. The Guidelines specifically apply only to race, color, national origin, sex and religion. If they are formally revised to apply to handicapped discrimination, the Director will adopt that application. One commenter questioned the use of the phrase "class as a whole" in subsection (i)(3). The Director does not agree that the phrase should be changed. To be able to use a selection procedure which excludes a class of handicapped individuals as a whole, the recipient government must establish to the satisfaction of the Director that no member of that class of individuals would be able to perform the essential functions of the job in question.

Section 51.55(k), "Program accessibility" received a majority of the comments relating to the cost of compliance. It is emphasized that compliance with this subsection does not mean that recipient governments will be required to retrofit all of their public buildings. For a particular program or activity to be accessible, it is not required that the entire facility in which the program or activity is conducted be accessible. Structural changes to facilities are required only after all other means of making programs accessible have been pursued.

A number of comments were received on § 51.55(k)(10), "Leased facilities." The Director agrees that this provision as written needed clarification. It is important, however, to make it clear that a recipient government cannot avoid the program accessibility requirements merely by conducting its programs and activities in leased facilities. Accordingly, § 51.55(k)(10) has been eliminated and subsections (k)(1), (2), (k)(7) and (8) have been amended to clarify that programs and activities operated in existing facilities, owned or leased by the recipient government, must be accessible. Where a recipient government leases a facility, it must make whatever non-structural changes are necessary to make facilities accessible. Where an existing facility is leased, however, structural changes will not be required if the lessor refuses to make them and no other more readily accessible facility is available.

Existing facilities newly leased after January 1, 1977, or on which leases are renewed must meet the requirements of § 51.55(k)(2) for existing facilities. Leases of newly constructed facilities must meet the requirements set forth in § 51.55(k)(7) for new construction. Alterations to existing facilities which are leased must meet the requirements of Section 51.55(k)(8).

Section 51.55(k)(5), is deferred.

Section 51.55(k)(9) is amended to incorporate the 1980 American National Standard Institute Standards, as well as the 1961 version and allow compliance with either.

Proposed § 51.55(k)(10), was eliminated.

Proposed §§ 51.55(k) (11) and (12), have been redesignated §§ 51.55(k) (10) and (11). One commenter suggested that the definition of commencement of construction be amended to conform with the definition contained in the HEW regulations. In this instance, however, the provision being interpreted is one uniquely included in the Revenue Sharing Act and need not be consistent with HEW's definition.

One commenter suggested that subsection (k) should provide specific provisions concerning the need for structural changes to historical properties. However, the regulations with their emphasis upon program accessibility over structural changes to facilities, do not need specific treatment of historical properties.

A new § 51.55(1) is added to the regulations to cover the situation in which the ORS is requested to act upon a complaint concerning subject matters unresolved by another Federal agency, the agency in charge of coordination of Section 504, or by the courts. One example of such an unresolved issue is whether obesity should be considered a handicap. Another example is whether all public television broadcasting must be captioned for the deaf. The Department of Education is currently involved in litigation on this issue and at the same time the complainants have filed a complaint with the ORS. This provision is particularly needed because the ORS supports an almost unlimited range of programs and activities of State and local governments that are under the primary jurisdiction of other departments and agencies.

The Director has determined that the ORS may defer action on legal issues not resolved until the coordinating agency has had an opportunity to provide guidance in the interest of uniformity of Federal enforcement of Section 504. In this way, the ORS will avoid conflicting Federal enforcement problems in this still evolving area of the law. The coordinating agency referred to is the Department of Justice pursuant to Executive Order 12250, which supersedes Executive Order 11914, which gave such authority to the Department of HEW.

At the same time, the Director is concerned that consultation with the coordinating agency may impede resolution of complaints in the expeditious manner required by the Revenue Sharing Act. In order to ensure that coordination will take place as expeditiously as possible, and at the same time allow for flexibility, the regulations would require the Director to consult with the coordinating agency within one week. The Director would also have to make a determination as to whether the Department of Justice will act within thirty (30) days. If guidance cannot be expected within thirty (30) days, the Director shall begin to obtain preliminary information needed to process the complaint while waiting for the guidance to be received. The ORS may defer making any findings until the Department of Justice has provided the necessary guidance. With these safeguards, possible deferral of action on the complaint should not result in undue delay in the processing of complaints. Accordingly, when a complaint concerning unresolved issues under Section 504 is received, the Director would immediately consult with the appropriate lead agency and act upon the guidance received.

*Section 51.56—Nondiscrimination on the basis of age.* Section 51.56 "Discrimination on the basis of age," has not been included in these regulations because the final regulation is currently under review by the Department of Health and Human Services (HHS). It will be published separately when approved.

### *EEOC Guidelines*

ORS final regulations adopt the EEOC Guidelines concerning sex (§ 51.54), national origin (§ 51.57), and religion (§ 51.58). Violations of the provisions of these Guidelines are considered violations of the provisions of this subpart. The EEOC Guidelines are adopted to ensure that the Federal government will apply the same standards concerning employment discrimination, and that there will be consistency in the Federal civil rights enforcement effort. It is intended that the most current of the EEOC Guidelines be applicable to this subpart. Any subsequent revisions will also be adopted by ORS to the extent necessary to insure that is the case.

*Section 51.59—Assurances required.* This section was amended on July 24, 1978 (43 FR 31927) to eliminate the requirement that the copy of a holding to be submitted to the Director be certified. The final regulation also amends the 1979 proposed rule concerning delay of entitlement payments and constructive waivers to conform with the provisions of § 51.3(e) of subpart A and for other than nondiscrimination violations.

*Section 51.60—Compliance information and reports.* One commenter suggested that compliance reports be required to be made available for public inspection. The Director disagrees with this comment because in many cases, such reports contain confidential information. To require compliance reports to be made available for public inspection could foreseeably hinder compliance efforts. Paragraph (c) of this section, concerning constructive waiver is amended from its proposed form to be consistent with the provisions to § 51.3(e) of Subpart A.

*Section 51.61—Compliance reviews and affirmative action.* This provision was completely revised to provide more specificity concerning what a compliance review will consist of. The regulation is modeled after that of the Law Enforcement Assistance Administration of the Department of Justice (28 CFR 42.206) to enforce the Crime Control and Safe Streets Act of 1976.

One commenter suggested that § 51.61(a)(2)(i) be amended to reflect that the mere presence of minorities or women in the relevant labor market is not sufficient to indicate discrimination because they may not be available for employment.

Subsection (a)(2) only suggests factors that may be considered in selecting a recipient government for a compliance review and are not to be considered evidence of discrimination. The Uniform Guidelines on Employee Selection Procedures will be used to evaluate the information obtained during the review.

Section 51.61(b) "Affirmative action," removes the reference to the Guidelines of the Equal Employment Opportunity Coordinating Council, which Council no longer exists. The EEOC has published Affirmative Action Guidelines, which supersede those of the Coordinating Council. Accordingly, the Director adopts these Guidelines in order to provide guidance concerning when affirmative action is appropriate.

*Section 51.62—Administrative complaints and investigations.* Section 51.62(b) "investigations," amends the interim regulation to clarify that ORS will investigate administrative complaints, which allege a discriminatory practice which, if true, would violate the Act. Information other than complaints, either generated within or outside of the ORS may also be the source of an investigation. This paragraph also provides that the Director may defer to the Attorney General in appropriate cases. The subsection, in conjunction with § 51.70(c), serves as the basis for a cooperative agreement with the Department of Justice. The final rule also provides that the scope of an investigation is not limited to the complaint or other information on which it is based, but may be expanded to include other matters.

*Section 51.64—Notification of noncompliance.* Sections 51.64 and 51.65 combine interim §§ 51.62, 51.65, 51.67 and 51.68 and generally reorganize the provisions describing the procedures for effecting compliance.

Section 51.64(a) provides that after an investigation or receipt of a determination of a State administrative agency, the Director shall if warranted by the facts and the record, make a finding that it is more likely than not that the recipient government has failed to comply with the provisions of this subpart. The Director shall within ten days of making a finding, issue a notice of noncompliance to the recipient government and inform the government that it has 30 days to enter into compliance, provide evidence to demonstrate compliance, or prove by clear and convincing evidence that revenue sharing funds were not used to fund the particular program or activity, or a determination of noncompliance will be issued.

Section 51.64(b) provides that within 10 days after receipt of a holding, the Director shall notify the recipient government of the holding and that the holding is conclusive on the issue of discrimination. The notice of noncompliance shall further inform the recipient government that it has 30 days to enter a compliance agreement or prove lack of funding by clear and convincing evidence, or a determination of noncompliance will be issued. This section also provides that the Assistant Attorney General for Civil Rights shall be notified of findings and holdings.

Section 51.64(b)(2) provides that where the remedial order issued on which the holding is stayed by a court, the stay will not affect action by the Director, unless the ORS is specifically included in the stay.

One commenter suggested that there was some confusion in the time limits for issuance of a finding. A finding is contemplated to be issued 90 days after the Director receives the administrative complaint or State administrative agency determination of discrimination. Accordingly, the two time periods are not contradictory. The preamble to the proposed regulations discussed the recommendations of the EEOC, pursuant to its coordination authority under Executive Order 12067. The EEOC recommended that the pre-finding process, an informal notice to recipients of possible noncompliance prior to the issuance of finding and notification of noncompliance set forth in § 51.64, be included in the regulations. Comments on this issue were requested, but none were received. Since the pre-finding process has since been eliminated by the Director, it is no longer necessary to add it to the regulation.

A new paragraph (c) is added to § 51.64 to describe the effect of a stay upon an administrative proceeding. This provision reflects an opinion received from the Department of Justice that the stay suspends the administrative proceeding to the extent that it covers the same issues.

*Section 51.65—Determination by the Director.* This section covers the action to be taken by the Director if the recipient government fails to enter into a compliance agreement after receipt of notification of noncompliance. Once a determination of noncompliance is issued, the recipient government has ten days to enter a compliance agreement, prove by clear and convincing evidence that the program or activity complained of was not funded with revenue sharing funds or request a hearing. If the recipient government does not take any of these actions within the 10-day period, the payment of revenue sharing funds to that government will be suspended until a compliance agreement is concluded. Section 51.65(b)(3) provides that administrative action based upon a holding will be discontinued if that holding is reversed by an appellate tribunal.

This section is also amended to reflect that the Director has the discretion to issue both determinations of compliance and noncompliance and that the Assistant Attorney General for Civil Rights shall be notified of such determinations. The time periods contained in this section are statutorily derived and, therefore, cannot be expanded as requested in one comment.

Interim §§ 51.65, 51.68(c), 51.69, and 51.72 concerning administrative hearing procedures have been placed in appropriate sections of subpart G.

*Section 51.66—Compliance agreements.* Section 51.66(a) sets forth the requirements for compliance agreements where the ORS is not directly a party.

Section 51.66(b) provides that in the case of a holding, the remedial order issued pursuant to the holding, if any, will be the basis of a compliance agreement. If there is no extant remedial order, a compliance agreement will be modified, if necessary, to conform to the remedial order of the court.

Section 51.66(c) sets forth the requirements for a compliance agreement between the Director and a recipient government. It must be one document in writing and signed by the Director and the chief executive officer.

One commenter suggested that the ORS should monitor a recipient government's performance under compliance agreements. The Director agrees that reference to such monitoring should be included in the regulations. Accordingly, a new subsection (d) is added to the final regulation which provides that the Director will monitor compliance agreements and may require periodic reports which demonstrate continued compliance.

Interim § 51.66(d) is redesignated (e) and provides that if the Director believes that the recipient government has violated the provisions of the agreement, the Director may issue a determination of noncompliance based upon the alleged violation of agreement. A subsequent administrative hearing would be limited to the issue of whether the recipient government complied with the agreement.

"Notification to complainants of compliance agreement" is redesignated § 51.66(g). One commenter suggested that copies of compliance agreements be furnished to the complainant prior to their execution. The Director believes that to do so may interfere with the negotiation process and declines to accept this comment.

*Section 51.67—Resumption of suspended entitlement payments.* This section remains unchanged, except that the word "may" is replaced with "shall" since the Director has no discretion to continue to withhold revenue sharing funds if one of the events described occurs.

*Section 51.68—Exclusion of administrative remedies.* Interim § 51.64 is redesignated 51.68 and revised to provide additional clarity.

*Section 51.69—Agreements between agencies.* Interim § 51.74 is redesignated Section 51.69 and is revised to provide more specificity concerning the contents of a compliance agreement. Section 122(h) of the Act requires the Director to enter into agreements with other agencies to ensure consistent civil rights enforcement and efficient use of personnel and resources. Even without such agreements however, the ORS will cooperate with other Federal agencies to reduce the costs of compliance and burdens on recipient governments and to increase the efficiency of the Federal Civil Rights effort. Paragraph (c) of this section concerning review of preliminary decisions of the administrative law judge was eliminated because it was deemed unnecessary.

*Section 51.70—Jurisdiction over property.* Interim § 51.73 is redesignated Section 51.70.

*Section 51.75—Authority of Attorney General of U.S.* This section of the interim regulations was deleted due to the fact that it does not provide guidance concerning actions required of the ORS or revenue sharing recipients.

### Subpart F—Fiscal Procedures and Auditing

*Section 51.100—Definitions.* This subpart is reorganized to take the definitions contained in § 51.101. "Auditing and evaluations," and 51.2 (of subpart A) general definitions, and create a new definition section for Subpart F, 51.100. Sections 51.100 (a) and (b) add the only new definitions. The definitions of "compliance" and "financial audit" reflect the current operating procedure of dividing the single independent audit requirement into two separate audits, a financial audit of all of a recipient government's funds and a compliance audit to determine that revenue sharing funds were spent in compliance with the provisions of the Act. The provisions of the Act referred to include the nondiscrimination provisions of Section 122, public participation requirements of Section 121, the prohibition against the use of revenue sharing funds for lobbying purposes and the requirements in section 123(a) that revenue sharing funds be spent in accordance with State and local laws and procedures.

The definition of "financial statements" in paragraph (c) is revised from the 1979 proposed rule to include the reference to the presentation of footnotes.

*Section 51.101—Procedures applicable to the use of funds.* Several commenters objected to the requirement contained in § 51.101(a) that revenue sharing trust funds established as separate sets of accounts to be classified and accounted for as special revenue funds. The comments correctly pointed out that this requirement conflicted with generally accepted accounting principles, and the reference to special revenue funds is eliminated.

Because the requirement that recipient governments spend their entitlement funds only in accordance with State or local laws and procedures has been moved to § 51.45 of Subpart D, current paragraph (d) is redesignated paragraph (c) and paragraph (e) is redesignated paragraph (d).

*Section 51.102—Auditing and evaluation.* Section 51.102(a) includes a reference to the separation of the single audit requirement into a financial audit and a compliance audit. A new paragraph (a)(2) is added to § 51.102 to inform recipient governments when audits must be submitted to the Director.

This section is amended to reflect the fact that the ORS encourages the use of the Office of Management and Budget's Circular A-102 Attachment P in meeting the audit requirements of the Act. A new paragraph (a)(3) reflects the acceptance of the Office of Management and Budget procedures.

Section 51.102(b) eliminates the requirement previously imposed that a recipient government submit a written assurance in order to elect to follow State or local law. The section also adds a new subsection to clarify that a compliance audit is required when a recipient government elects to follow State or local law in the performance of an audit.

Section 51.102(c) makes it clear that where a recipient government is required by State or local law to conduct an audit, though it receives less than $25,000 in entitlement funds, the audit must be performed. As stated above, Section 123(a)(4) of the Act requires the expenditure of revenue sharing funds in accordance with the laws and procedures applicable to the expenditure of a recipient governments own funds, unless that State or local law conflicts with Federal law. Additional requirements which go beyond those in the Revenue Sharing Act would not be considered conflicting. As stated in Section 123(c) of the Act, the performance of a locally required audit will be considered compliance with the Revenue Sharing Act. The audit performed pursuant to this subsection need not be submitted to the ORS, but shall be made available upon request by the Director.

Section 2(g) of the 1980 Amendments provided a special modification of the audit requirements for local governments within the State of Michigan. In this situation, the State agency had entered into an agreement with ORS to perform the required audits for county governments, but later found that it could not complete the audits. The affected counties are authorized to conduct the required audits in accordance with generally accepted auditing standards and only concerning fund accounts in which revenue sharing funds are placed. The final rule adds a new § 51.102(d), "Modification of audit requirement" to implement that special modification.

Section 51.102(d) of the proposed rule entitled, "Series of audits" is redesignated § 51.102(e). This subparagraph is also amended to require that financial and compliance audits must be performed in the same fiscal year.

Since the 1980 Amendments merely authorized, but did not appropriate revenue sharing funds for the State governments, an amendment to the regulations was needed to clarify when, if ever, the States would be required to conduct independent audits required by the Act. The Department has determined that a State government will be required to conduct such audits only if it receives entitlement funds for three consecutive entitlement periods. The same approach was taken for local governments which receive less than $25,000 in entitlement funds. A new paragraph (f) is added to § 51.102 to clarify our interpretation of this provision.

*Section 51.103—Waiver of Audit Requirement.* Section 2(f) of the 1980 Amendments provides an additional waiver for the situation in which the accounts of units of local government are audited by a State audit agency which either does not follow generally accepted auditing standards or which is not independent. The State agency must be demonstrating progress towards meeting the audit standards or becoming independent. The final rule revises proposed § 51.103 "Waiver of audit requirement" to include the new basis for granting a waiver and clarify the procedure by which the waiver will be granted. This section is also amended by the 1979 proposed rule to eliminate the requirement that the request for waiver be submitted before March 31, 1978.

*Section 51.106—Audit opinions.* This section is amended to clarify the notice of audit opinions and to eliminate the definition of generally accepted accounting principles as it is redundant.

*Section 51.107—Scope of audits.* The final rule would amend this section to clarify that the scope of audits include all of the financial statements for each separate fund. The section would further add the Statements on Auditing Standards as an additional guide for the type of audit to be conducted. This section is also amended to update the reference in paragraph (a)(4) to the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, from the 1972 edition to the 1981 edition.

*Section 51.108—Retention and submission of audit reports and work papers.* Sections 51.108 and 51.109 of the current regulations are combined into one section. Paragraph (a) contains the requirements of old § 51.109 that audit reports and other information needed to determine compliance be submitted to the Director upon request. Paragraph (b) contains the requirement of old § 51.108 that audit work papers be retained for three years after the issuance of the audit reports and be submitted to the Director or the Controller General upon request.

*Section 51.109—Procedures for effecting compliance.* A new § 51.109 is added by the final rule to point out that violations of the provisions of this subpart are redressed by the enforcement procedures contained in § 51.3 of Subpart A of this part.

### Subpart G—Proceedings for Reduction in Entitlement, Withholding or Suspension of Funds

This subpart was revised by the 1979 proposed rule to differentiate between the requirements for administrative hearings concerning violations of Subpart E and those concerning Subparts B, D, and F. Section 122 of the Revenue Sharing Act sets forth the hearing procedures for nondiscrimination violations. Section 123(b) of the Act sets forth the hearing procedures for violations of the provisions of the Act other than Section 122. The current Subpart G does not make it clear where the two procedures are the same and where they differ. In the interest of consistency, the administrative hearing procedures contained in current Subpart E are added to Subpart G. This subpart is also amended to eliminate any reference to repayment of entitlement funds, for which the Act no longer provides authority.

*Section 51.102—Reasonable notice and opportunity for hearing.* Section 51.102 states that provisions for withholding, or reduction in revenue sharing payments apply to violations of the provisions of Subparts B, D, and F, while provisions for suspension or termination of the payment of revenue sharing funds apply to violation of the provisions of Subpart E.

*Section 51.103—Opportunity for compliance.* Section 51.103 is amended to reference the provisions pursuant to which a recipient government will be given the opportunity to enter into compliance prior to the initiation of an administrative hearing.

*Section 51.204—Institution of an administrative hearing.* The final rule provides for the institution of an administrative hearing. A hearing instituted under the provisions of Subpart E differs from the hearing instituted under other provisions because it is instituted by the Director only after the request of the recipient government and is required under Section 122(b)(3)(A) to be instituted within 30 days of receipt of the request by the Director.

*Section 51.205—Complaint for administrative hearing; Section 51.206—Service of complaint and other papers.* The final rule amends these sections to point out the shortened time frames under which complaints and answers for hearings under Subpart E must be filed pursuant to Section 122(b)(3)(A). Section 51.205 provides that for hearings under Subpart E, the complaint must require that the answer be filed within 10 days of receipt of the complaint by the recipient government. Section 51.206 requires that for hearings under Subpart E, the complaint must be served upon the recipient government within seven days of receipt of the request for a hearing from the recipient government.

*Section 51.211—Administrative hearings.* This section would set forth the procedures under which an administrative hearing is conducted. Section 51.211(b) is based upon §§ 51.66 and 51.68 of interim Subpart E.

*Section 51.214—Depositions.* The final rule would amend this section to provide for the taking of depositions in a shorter time period for hearings under the provisions of Subpart E. The summary hearing pursuant to § 51.211 must commence within 30 days of the request for an administrative hearing by the recipient government.

*Section 51.217—Preliminary finding (for hearings under Subpart E).* Section 51.217 sets forth the provisions currently contained in § 51.66 of the interim regulations concerning actions to be taken by the Director after the administrative law judge issues a preliminary finding under the provisions of Subpart E.

*Section 51.218—Initial decision of the administrative law judge.* The final rule would amend this section to clarify the nature of the decision of the administrative law judge. The administrative law judge's decision does not include the remedy for noncompliance. The decision sets forth the findings of fact and conclusions of law and whether the recipient government has failed to comply with the provisions of the Act. The final rule further revises this section to emphasize that the administrative law judge does not order suspension of entitlement funds. Only the Director has such authority. The Act does, however, provide for an order of termination of funds by the administrative law judge. The section further describes the actions to be taken by the Director depending upon the decision of the administrative law judge. The provisions of current § 51.223 is incorporated into this section and § 51.223 is eliminated.

*Section 51.221—Procedure for review of decision of administrative law judge.* The final rule removes the restriction in current § 51.221(b) that the Director appeal only in absence of appeal by respondent. Section 51.221(b) adds a new provision to state that the Secretary of the Treasury may review the decision of the administrative law judge absent appeal by either party. Current § 51.222 is added to this section as a new § 51.221(c). The subsection provides that the

Secretary's decision is the final agency decision.

*Section 51.222—Effect of absence of appeal or review of initial decision of administrative law judge.* The final rule adds a new section to clearly state that the initial decision of the administrative law judge becomes the final agency decision if not appealed by either party or reviewed by the Secretary.

*Section 51.223—Judicial review.* Current § 51.213, "Effect of order of repayment, withholding of funds or suspension of funds is eliminated and merged into § 51.218. Current § 51.224 is redesignated § 51.223. The final rule also amends this section to provide that the Director may cross-appeal issues decided adversely to the Office of Revenue Sharing, unless those issues were ruled upon directly by the Secretary.

*Section 51.224—Judicial review.* Current § 51.225 is redesignated § 51.224.

## PART 52—ANTIRECESSION FISCAL ASSISTANCE TO STATE, TERRITORIAL AND LOCAL GOVERNMENTS

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52.100 Incorporation of hearing procedures.

AUTHORITY: These interim regulations are issued under the authority of § 214 of the Public Works Employment Act of 1976, title II, Pub. L. 94-369, as amended by the Intergovernmental Antirecession Assistance Act of 1977, Title VI, Pub. L. 95-30 (42 U.S.C. 6721 et seq.) and Treasury Department Order No. 224, dated November 15, 1976 (38 FR 3342), as amended by the Treasury Department Order No. 242 (Revised), dated May 17, 1977.

SOURCE: 42 FR 48546, Sept. 23, 1977, unless otherwise noted.

## Subpart A—General Information

### § 52.0 Scope and application of regulations.

The rules and regulations of this part are prescribed for carrying into effect Title II of the Public Works Employment Act of 1976 (Pub. L. 94-369) as amended by the Intergovernmental Antirecession Assistance Act of 1977 (Title VI, Pub. L. 95-30), and are applicable as of September 23, 1977.

### § 52.1 Delegation of authority.

By delegation order of the Secretary of the Treasury, the Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary by the Public Works Employment Act of 1976, Title II, Pub. L. 94-369, as amended. A reference to the Director in the masculine gender shall not be construed to exclude the feminine gender.

### § 52.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the terms are defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means Title II of the Public Works Employment Act of 1976, Pub. L. 94-369, as amended by the Intergovernmental Antirecession Assistance Act of 1977, Title VI, Pub. L. 95-30, 42 U.S.C. 6721, et seq.

(b) "Chief executive officer" of a unit of local government means the elected official, or the legally designated official who has the primary responsibility for the conduct of that unit's governmental affairs, and is the chief executive officer for purposes of the Revenue Sharing Act and 31 CFR 51.2(b). Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality, the elected county executive of a county, the chairman of a county commission or board in a county that has no elected county executive, the township supervisor, trustee, first selectman, chairman, city manager, county manager, or such other official as may be designated pursuant to law by the duly elected governing body of the unit of local government; or the chairman, governor, chief or president (as the case may be) of an Indian tribe or Alaskan native village.

(c) "Department" means the Department of the Treasury.

(d) "Director" means the Director of the Office of Revenue Sharing.

(e) "Effective date of the Act" means July 1, 1977.

(f) "Governor" means the Governor of any of the 50 states and the chief executive officer of the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, and the Virgin Islands of the United States.

(g) "Independent public accountant" means independent certified public accountant or independent public accountant licensed on or before December 31, 1970, certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(h) "Indian tribe and Alaskan native village" means the recognized governing body of an Indian tribe or Alaskan native village which perform substantial governmental functions. Certification to the Director by the Secretary of the Interior (or Governor of a State in the case of State affiliated tribes) of the recognized governing body of an Indian tribe or an Alaskan native village performing substantial governmental functions for purposes of the Revenue Sharing Act shall constitute prima facie evidence of compliance with such criteria.

(i) "Local government" means the government of a county, municipality, township or other unit of government within the State which:

(1) Is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes and reported to the Secretary), and

(2) Performs substantial governmental functions. The term local government includes the District of Columbia and the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions.

(j) "Payment" means funds paid to a State, territory or local government pursuant to the Act.

(k) "Quarterly allocation" means the amount of funds allocated to a State, territory or local government as determined by the Director pursuant to the Act.

(l) "Recipient government" means a State, territory or local government which receives payments under the Act.

(m) "Revenue Sharing Act" means the State and Local Fiscal Assistance Act of 1972 (Title I, Pub. L. 92-512), as amended by the State and Local Fiscal

Assistance Amendments of 1976 (Pub. L. 94-488).

(n) "Secretary" means the Secretary of the U.S. Department of the Treasury.

(o) "State government" means the government of any of the 50 states.

(p) "Substantial governmental function" means, with respect to township governments, that such governments have expended revenues within the last two fiscal years (current and preceding fiscal years) and have the present authority to expend revenues within two or more of the following governmental expenditure categories: Education, Highways, Public Welfare, Health and Hospitals, Police and Corrections, Fire Protection, Sewerage and Sanitation, Natural Resources, Housing and Urban Renewal, Transportation, Libraries, Financial Administration, General Administration, General Public Buildings, Parks and Recreation and Utilities.

(q) "Territory" means the governments of the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands of the United States.

### § 52.3 Procedure for effecting compliance.

(a) *In general.* Whenever the Director receives an administrative complaint, audit report, or other information alleging violation of any provision of this part, the time limits applicable to the conduct of an investigation or a compliance review shall be those set forth in 31 CFR Part 51, Subpart E, which are incorporated by reference into this part wherever applicable.

(b) *Determination of noncompliance.* If the Director determines that a recipient government has failed to comply substantially with any provision of this part, other than Subpart E, and after giving reasonable notice and opportunity for a hearing to the Governor of the State or territory or chief executive officer of the local government pursuant to Subpart G of this part, the Director shall notify the recipient government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld until such time as the Director is satisfied that appropriate corrective action has been taken and there is no longer any failure to comply. Until he is so satisfied, the Director shall make no further payents to such recipient government.

(c) *Determination to delay payment.* Whenever the Director determines that a recipient govenment has failed to comply with the assurance or reporting requirements of Subpart B of this part, he may delay payments to such recipient. A determination to delay a payment shall not be subject to the procedure set forth in paragraph (b) of this section and shall be in effect for such time as is necessary to achieve compliance.

### § 52.4 Extension of time.

When, by Subparts B, C, or D of this part, a recipient government is required to perform an act within a specified time, the Director may grant a request for an extension of time if in his judgment it is necessary, appropriate and in accordance with the Act. Requests for extensions of time shall be in writing and shall set forth the facts and circumstances supporting the need for more time and the amount of additional time requested.

### § 52.5 Transfer of payments to secondary recipients.

Those prohibitions and restrictions set forth in Subparts D, E, and F of this part which are applicable to a recipient government's payments continue to be applicable to such funds if they are transferred to another governmental unit or a private organization. A violation of any provision of such subparts by a secondary recipient shall constitute a violation by the recipient government and the applicable penalty for failure to comply shall be imposed on the recipient government.

## Subpart B—Reports and Written Communications

### § 52.10 Assurances; Reports to the Director.

(a) *Requisite assurances for receipt of payments.* A State, territorial or local government will receive payments only upon the filing of a statement of assurances by the chief executive officer with the Director. The statement of assurances provides that a recipient government will comply with certain specific requirements of the Act and this part with respect to the use of payments. In addition, township governments must assure the Director that they perform substantial governmental functions, as defined in § 52.2(p) of this part.

(b) *Waiver for failure to submit a statement of assurances.* In accordance with Administrative Rulings No. 76-4 (41 FR 52828) and No. 77-1 (42 FR 13892), otherwise eligible State and local governments which did not file a statement of assurances with the Director on or before June 1, 1977, have waived payments for the calendar quarters begining July and October, 1976, and January and April, 1977. Payments for the calendar quarters beginning after June 30, 1977 will be deemed to be waived unless a properly executed statement of assurances has been received by the Director for not more than 60 days after the beginning of such calendar quarter.

(c) *New statement of assurances.* A statement of assurances may be required to be filed with the Director for each Federal fiscal year on a date to be determined by the Director. Nothing in this section shall preclude the Director from requiring recipient governments to submit additional assurances as are appropriate to enforce compliance with the Act and the provisions of this part.

(d) *Economization assurance.* The governor or chief executive officer of a recipient government shall provide an assurance on the statement of assurances form required in paragraph (a) of this section, that reasonable efforts have been made to achieve substantial economies in its operations and that payments are necessary to maintain essential services without weakening Federal Government efforts to stimulate the economy through reductions in the Federal tax obligations.

(e) *Reports.* Recipient governments are required to submit reports containing the data requested by the Director to carry out the purposes of this part, such as the uses of payments and their fiscal impact. The reports shall be made within the time limits and in the form and manner specified by the Director.

### § 52.11 Publication and publicity of reports; public inspection.

(a) *In general.* Each report filed with the Director pursuant to § 52.10(e) of this part shall be published within seven days of such filing in a newspaper of general circulation within the jurisdiction of such government.

(b) *Permissible newspapers.* A newspaper is appropriate for purposes of paragraph (a) of this section if it conforms with the newspaper publication requirements for general revenue sharing reporting purposes pursuant to the Revenue Sharing Act.

(c) *Legal notice rules are inapplicable.* The publication requirement in paragraph (a) of this section does not require the publication of reports as a legal notice. A recipient government may publish reports without regard to State or local statutory requirements for the publication of legal notices.

(d) *Waiver of the publication requirement.* (1) The Director may waive the publication requirement of paragraph (a) of this section upon receipt of a written assurance that the cost of publishing a report exceeds 10% of the total amount of payments received by such government during the period covered by such report. The assurance shall be submitted to the Director at least 30 days in advance of the date required for publication under paragraph (a) of this section. The assurance shall also state the alternative means which would be used to publicize the report to persons within the jurisdiction of the recipient government.

(2) The Director may also waive the publication requirement of paragraph (a) of this section upon receipt of a written assurance, signed by the governor or chief executive officer of the recipient government, which states that an alternative means of publicizing the report is more effective to inform persons within the jurisdiction of the recipient government of the report's contents. The assurance shall be submitted to the Director at least 30 days in advance of the publication date under paragraph (a) of this section.

The assurance shall also state the alternative means which would be used to publicize the report to persons within the jurisdiction of the recipient government.

(e) *Publicity.* Each recipient government, at the same time as required for publication of reports under paragraph (a) of this section, shall advise the news media within its geographic area, including minority and bilingual news media, of the publication of its reports made pursuant to paragraph (a) of this section and shall provide copies of such reports to the news media on request.

(f) *Public inspection.* Each recipient government shall make available for public inspection a copy of each of the reports required under paragraph (a) of this section and such information as is necessary to support the information and data submitted on each of those reports. Such detailed information shall be available for public inspection at a specified location during normal business hours.

### § 52.12 Special reports.

(a) *In general.* Each recipient government shall report to the director, in accordance with the form and time provisions of paragraph (c) of this section, any increase or decrease in any tax rate which it imposes and any substantial (five percent or more on an annualized basis) reduction in the number of individuals it employs (excluding part-time, seasonal and elected officials) or in services (five percent or more on an annualized basis of the total operating budget allocated to providing services) which such recipient government provides during each calendar quarter in which a payment is received.

(b) *State transfers to local governments.* Each State which receives a payment shall report to the Director, in accordance with the form and time provisions of paragraph (c) of this section, any fiscal decision likely to decrease the amount of intergovernmental transfers it provides to the local governments within its boundaries as compared to the amount of intergovernmental transfers provided during the twelve-month period which ended June 30, 1976; together with an explanation of the reasons for such decision.

(c) *Time limitation; form.* Each recipient government shall submit the reports required in paragraphs (a) and (b) of this section upon request of the Director not more than six months after the date on which the decision to impose such tax rate increase or decrease, such reduction in employment or services, or such decrease in intergovernmental transfers is made public. The reports shall be on a form provided by the Director.

## Subpart C—Adjustments and Data Factors

### § 52.20 Adjustment reserve fund.

In order to make subsequent adjustments to a payment, the Director shall establish an Antirecession Fiscal Assistance Adjustment Reserve Fund. The Director shall set aside a percentage of the funds appropriated for the purpose of making such payments as in his judgment are necessary to insure that there will be sufficient funds available to make all appropriate adjustments. Payments waived pursuant to § 52.10(b) or § 52.29 of this part, shall be set aside into such Reserve Fund. The funds reserved in this manner and any other funds which the Director may set aside to the Reserve fund shall accumulate until the Director orders distribution of those funds to recipient governments in accordance with the Act.

### § 52.21 Adjustments to future payments.

(a) *In general.* Adjustment to payments may be effected through adjustment to subsequent payments unless this means of adjustments is deened impractical or impossible by the Director. In the case of a downward adjustment caused by an overpayment, the Director may demand repayment by the recipient government of the amount determined to have been overpaid. Overpayments shall be repaid on demand in the manner specified by the Director.

(b) *Minimum adjustment.* No adjustment of any kind of less than $100 per quarter shall be made if in the judgment of the Director such adjustment will be burdensome, costly or impractical.

(c) *Adjustments due to governmental reorganizations, etc.* If there is a change due to governmental reorganizations, annexations, boundary alterations, etc., made by the Director during a calendar quarter in the revenue sharing amount data factor used for quarterly allocations in that calendar quarter, the payments of recipient governments directly affected by such change shall be adjusted for such quarter.

### § 52.22 Unemployment rate data.

(a) *Unemployment rates determined or assigned by the Secretary of Labor.* Except as otherwise provided in paragraphs (b) and (c) of this section, unemployment rates used to determine quarterly allocations, payments and adjustments thereto, national termination of payments and termination of the eligibility of recipient governments, shall be the unemployment rate for the appropriate calendar quarter as determined or assigned by the Secretary of Labor for such recipient government and reported to the Director. The unemployment rate used to determine quarterly allocations for local governments for which the Secretary of Labor cannot determine a local unemployment rate shall be the local unemployment rate assigned by the Secretary of Labor. The Secretary of Labor, at his discretion, may assign to local governments for which a specific unemployment rate cannot be determined a labor market area unemployment rate, balance of labor market area rate, balance of county rate, census division rate, balance of census division rate, county rate, or other appropriate unemployment rate for an area in which such local government is located.

(b) *Unemployment rates submitted by a Governor.* The Governor of a State may submit to the Department of Labor, Bureau of Labor Statistics each calendar quarter, an unemployment rate for a local government within the Governor's jurisdiction for which the Secretary of Labor cannot determine a specific unemployment rate. The Secretary of Labor shall assign the local unemployment rate submitted by a Governor and shall report such rate to the Director, provided:

(1) The Governor has submitted to the Bureau of Labor Statistics the local unemployment rate for the appropriate calendar quarter for such local government, and such other data as specified by the Secretary of Labor. All submitted unemployment rates shall be certified by the State Employment Security Agency to have been developed in a manner consistent with the methodology used by the Bureau of Labor Statistics to determine local government unemployment rates. Such data shall be submitted by a date specified by the Secretary of Labor;

(2) The Secretary of Labor finds that the local government unemployment rate data submitted by the Governor has been determined in a manner consistent with the procedures and methodology used by the Department of Labor to determine such rates;

(3) The Governor has submitted all information requested by the Secretary of Labor to determine whether such local government unemployment rates have been determined in a manner consistent with the appropriate procedures and methodology; and

(4) The unemployment rate data submitted by a Governor, to the maximum extent technically feasible, is found by the Secretary of Labor to be conceptually consistent with the data for the nation as a whole. Further, the totals of unemployment and labor force for all local governments for which unemployment rates are submitted shall sum to State, county, labor market, census division, or other balance of area totals of their State.

(c) *Updating unemployment rates submitted by a Governor.* The Governor of each State that has submitted an unemployment rate pursuant to paragraph (b) of this section may, for subsequent quarters, submit updated unemployment rates certified by the State Employment Security Agency to have been developed in accordance with the Bureau of Labor Statistics procedures and methodology for local governments, for each local government for which a rate was submitted, and for other local governments within the State. These certified unemployment rates shall be submitted to the Secretary of Labor by a date and in such form and manner as prescribed by the Secretary of Labor. For a calendar quarter in which unemployment rate data for local governments in a State are not received by the Secretary of Labor from a Governor in accordance with this section, the quarterly allocations of such local governments shall be based on the rates assigned by the Secretary of Labor in accordance with paragraph (a) of this section.

### § 52.23 Revenue sharing amount.

(a) *State revenue sharing amount.* The State revenue sharing amount shall be each State's final allocation of revenue sharing funds as determined by the Director pursuant to § 107 of the Revenue Sharing Act for the most recently completed entitlement period prior to the calendar quarter for which the payment is made.

(b) *Local government revenue sharing amount.* The local government revenue sharing amount shall be each local government's final allocation of revenue sharing funds as determined by the Director pursuant to § 107 of the Revenue Sharing Act for the most recently completed entitlement period prior to the calendar quarter for which the payment is made.

### § 52.24 Territorial population.

The territorial population which shall be used for quarterly allocations to the territories shall be the most recent population for each territory as determined by the Bureau of Census and reported to the Director. The territorial population used for quarterly allocations to the territorial governments shall be determined by the Bureau of the Census for the same date of record.

### § 52.25 Finalizing data; verification of data.

(a) *Closing unemployment rate data.* Except as provided in paragraphs (d) and (e) of this section, the unemployment rate data reported by the Secretary of Labor to the Director shall be closed and final as of the date payments are made to recipient governments each calendar quarter.

(b) *Closing revenue sharing amount data.* Except as provided in § 52.21(c), and paragraphs (d), (e), and (f) of this section, the Director's determination of a recipient government's revenue sharing amount shall be closed and final as of the date payments are made each calendar quarter. A revenue sharing amount determined pursuant to § 52.26 of this subpart for governments without a revenue sharing entitlement (new governments), shall be closed and final as of the date of payment.

(c) *Closing territorial population data.* Except as provided in paragraphs (d) and (e) of this section, the territorial population reported by the Bureau of Census to the Director shall be closed and final as of the date payments are made each calendar quarter.

(d) *Time limitation of data verification.* A government may file a request for data verification with the Director on the grounds that a processing or clerical error was made in the unemployment rate data, the revenue sharing amount data, or the territorial population data used for its quarterly allocation, provided such data verification request is received by the Director within 21 days from the date such data is mailed by the director to the recipient government for such calendar quarter. Adjustments due to data errors discovered pursuant to this section may be made to the payment of any government for which such data was used for quarterly allocation purposes. Data verification of unemployment rates does not include variances in rates due to quartlerly or annual revisions by the Secretary of Labor after the date of payment for a calendar quarter. Nothing in this section shall affect the entitlement of governments under the Revenue Sharing Act.

(e) *Unemployment rate data verification by the Director or the Bureau of Labor Statistics.* Errors in unemployment rate data used for payments that are discovered by the Director or the Bureau of Labor statistics within 21 days from the date data is mailed to recipient governments each calendar quarter shall result in appropriate adjustments to the payment of a recipient government. Adjustments pursuant to this section shall be in accordance with § 52.21(b) of this part.

(f) *Revenue sharing amount data verification by the Director.* When the Director approves a revision of a revenue sharing entitlement for purposes of the Revenue Sharing Act, an appropriate adjustment in accordance with § 52.21(b) of this part shall be made to payments of a recipient government, where such payments were computed based upon the incorrect revenue sharing entitlement.

[43 FR 9807, Mar. 10, 1978]

### § 52.26 New units of local government.

*New units of local government.* A new local government which is reported by the Bureau of the Census to the Director as being an active government, and which otherwise qualifies for payment, shall be eligible for a payment for the next succeeding calendar quarter in which payments are made after its activation date. If such local government is a successor government, it shall be eligible to receive the payment of the local government to which it succeeded in accordance with the conditions of the succession. The Director may determine a revenue sharing amount for such government based on the most recent revenue sharing data available. A local government subject to this section shall not receive a payment until a statement of assurances is filed with the Director in accordance with § 52.10 of this part.

### § 52.27 National termination of payments; termination of eligibility.

(a) *National termination of payments.* Notwithstanding the existence of higher State or local rates of unemployment, or the existence of State or local excess unemployment percentages, payments will not be made in any calendar quarter, if—

(1) The average rate of national unemployment during the most recently completed calendar quarter which ended three months before the beginning of such calendar quarter did not exceed six percent, or

(2) The rate of national unemployment for the last month of the most recently completed calendar quarter which ended three months before the beginning of such calendar quarter did not exceed six percent.

(b) *Termination of eligibility.* Notwithstanding the existence of a rate of national unemployment in excess of six percent, payments will not be made to any State, territory or local government for any calendar quarter if—

(1) the average rate of unemployment as assigned or determined by the Secretary of Labor for such government for the most recently completed calendar quarter which ended three months before the beginning of such calendar quarter was less than 4.5 percent; or

(2) the rate of unemployment as assigned or determined by the Secretary of Labor for such government for the last month of the most recently completed calendar quarter which ended three months before the beginning of such calendar quarter did not exceed 4.5 percent.

### § 52.28 Minimum payment.

If the amount of a quarterly allocation to any local government is less than $100 in any calendar quarter, then no amount shall be allocated for such local government for that period and such funds will be reallocated to recipient governments within that quarter pursuant to the Act.

### § 52.29 Waiver of payments; nondelivery.

(a) *Waiver.* Any recipient government may waive a payment provided the chief executive officer, with the consent of the governing body of such government, notifies the Director in writing of its intention to waive and returns the payment to the Director. A waiver shall be effective until revoked pursuant to a written request of the chief executive oficer of the recipient government with the consent of the governing body. A new statement of assurances may be required whenever the statement of assurances previously submitted by such government has been invalidated, or is outdated.

(b) *Nondelivery.* A payment which is returned by the U.S. Postal Service to the Office of Revenue Sharing as being non-deliverable because of incorrect address information, or which is unclaimed for any reason, shall be retained by the Director until the payments can be delivered by other means to the recipient government.

### § 52.30 Dissolution of units of local government.

A unit of local government which dissolved, was absorbed or ceased to exist during a calendar quarter in which a payment is received may expend such payments to maintain basic services, provided, (1) the recipient government is in the process of winding-up its governmental affairs, and (2) continues to provide basic services during this winding-up period. When these two conditions are not met by a recipient government, the payments must be transferred to the successor local government with capacity to accept and use such payments. If the recipient does not know the identity of such successor government, the payment shall be returned to the Director.

## Subpart D—Expenditure Prohibitions and Restrictions

### § 52.40 Definitions.

As used in this part, the term:

(a) "Basic service" means an expenditure which may reasonably be classified under one of the following categories: Education, Highways, Public Welfare, Health and Hospitals, Police and Corrections, Fire Protection, Sewage and Sanitation, Natural Resources, Housing and Urban Renewal, Transportation, Libraries, Financial Administration, General Administration, General Public Buildings, Parks and Recreation, and Utilities.

(b) "Customarily provided" means a basic service has been provided by the Federal government, or a State, territorial or local government to persons under the jurisdiction of the recipient government during the current or preceeding fiscal year (of the recipient government) in which a payment is received by such recipient government.

(c) "Normal supplies" means those commodities that meet one or more of the following conditions:

(1) It is consumed when used; or

(2) It has a per unit purchase price of $1000 or less; or

(3) It has an estimated useful life, in the reasonable discretion of the recipient government, of less than one year; or

(4) It is expendable, that is, if the article is damaged or some of its parts are lost or worn out, it is usually more feasible to replace it with an entirely new unit rather than repair it; or

(5) It loses its original shape or appearance with use.

Normal supplies include, but are not limited to, office supplies, repair and maintenance supplies, operating supplies (such as fuel) and small tools.

(d) "Repairs" means expenditures made for the purpose of maintaining a structure or other capital asset in ordinary efficient operating condition, but that does not substantially add to the utility of the structure or asset, appreciably prolong its useful life or adapt it for a substantially different use.

### § 52.41 Permissible expenditures.

(a) *In general.* Payments shall be obligated, appropriated and expended for the maintenance of levels of employment and basic services which have been customarily provided. Payments shall be used for the acquisition of supplies or materials or constuction only to the extent that such expenditures are for normal supplies or repairs which, in the reasonable discretion of the recipient government, are necessary to maintain basic services. Payments may not be used for new construction or renovations which are not repairs or for supplies or equipment (including those used for repairs) which are not normal supplies, as these terms are defined in § 52.40 of this subpart. New programs may be initiated with payments, provided such programs are for a basic service which has been customarily provided.

(b) *Repayment of debt.* Payments may be used to pay the principal or interest on debt obligations of a recipient government, regardless of the date the debt was incurred, provided the proceeds of the indebtedness were expended in accordance with this part. For example, payments shall not be used for principal or interest charges on a debt incurred by a recipient government to finance a construction project.

(c) *Personnel expenses.* Payments may be expended for costs incurred on behalf of personnel employed in the maintenance of basic services. This includes but is not limited to the salary (and increases thereof), fringe benefits, social security payments, and retirement system contributions which a recipient government is obligated to finance for employees engaged in the delivery of basic services.

### § 52.42 Wage rates and labor standards.

(a) *Laborers and Mechanics.* All laborers and mechanics employed by contractors on all repair projects, including painting and decorating, costing in excess of $2000 and funded in whole or in part with payments shall be paid wages at rates not less than those prevailing on projects of a character similar to the contract work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276(a), 276(a-5)); and are covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7. The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 FR 3176) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(b) *Requests for wage determinations.* In situations where the Davis-Bacon Act standards are applicable in accordance with paragraph (a) of this section, the recipient government must ascertain the U.S. Department of Labor wage rate determination for each intended construction project and insure that the wage rates and the contract clauses required by 29 CFR 5.5 and 49 CFR 5(a.3) are incorporated in the contract specifications. The recipient government must also satisfy itself that the bidder is aware of his labor standard responsibilities under the Davis-Bacon Act. Wage rate determinations may be obtained by filing a standard Form 308 with the Employment Standards Administration of the applicable regional office of the United States Department of Labor at least 30 days before the invitation for bids, or in the case of projects covered by general wage rate determinations, the appropriate wage rate may be obtained from the FEDERAL REGISTER.

(c) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Director, the Secretary of Labor, the Comptroller General, and Department of Justice during normal business hours to its facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with this section. Where any information required of a recipient government is in the exclusive possession of any other agency, institution, or person, and such agency, institution, or person, fails or refuses to furnish such information, the recipient government shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Compliance reports.* Each recipient government shall keep such records and submit on request of the Director timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Director may determine to be necessary or useful to ascertain whether the recipient government has complied or is complying with this section.

### § 52.43 Applicability of State, territorial and local law.

(a) *In general.* Each recipient government shall spend payments for basic services in accordance with the State, territorial or local laws and procedures applicable to the expenditure of its own source revenues. Payments shall be expended only for purposes which the recipient government may finance with its own source revenues. Payments shall be appropriated and obligated pursuant to the budgetary process applicable to its own source revenues. Therefore, the recipient government shall provide for the expenditure of payments not solely by the executive, but also by the legislative branch, if that is the budgetary process used by the recipient government to provide for expenditure of its own source revenues.

(b) *Waiver.* The requirements of paragraph (a) of this section may be waived temporarily by the Director, upon determination that it is not possible for the recipient government to comply with the budgetary process applicable to the expenditure of its own source revenues within the six month appropriation or obligation time limitation set forth in § 52.44 of this part. The Director may grant such a waiver only when the chief executive officer of the recipient government has submitted a written request for a waiver to the Director at least 30 days prior to the last date for obligating or appropriating payments in accordance with § 52.44 of this part. Such request must set forth:

(1) The facts and circumstances which would make compliance with both the requirements of paragraph (a) of this section and § 52.44 not possible;

(2) An explanation of the alternative budgetary process which would be utilized for the payment if the waiver is granted. The alternative budgetary process shall be modeled to the maximum extent on the process applicable to the recipient government's own source revenues, and shall be developed by the chief executive officer.

(3) An assurance that the recipient government has published, unless a waiver of this publication requirement is approved in accordance with § 42.11(d) of this part, a public notice of this waiver required in a newspaper of general circulation within its geographic area. The newspaper used for such publication shall conform with the requirements in § 52.11 of this part. The notice shall be published not less than 10 calendar days before the waiver request is mailed to the Director, and shall state the following:

(i) The requirements of paragraph (a) of this section and § 52.44;

(ii) The legal or practical circumstances that prevent the rcipient government from complying with such requirements;

(iii) That the chief executive officer of the recipient government intends to request the Director of the Office of Revenue Sharing to waive the requirement that payments must be spent in accordance with the budgetary procedures applicable to the expenditure of such government's own source revenues within six months of the day after receipt, as required by paragraph (a) of this section, and § 52.44;

(iv) The alternative budgetary process which would be utilized if the Director grants requested the waiver for the appropriation or obligation of the payments; and

(v) That interested persons are encouraged to provide written comments on this waiver request to the chief executive officer of the recipient government and the Director of the Office of Revenue Sharing. The address of the Office of Revenue Sharing shall also be stated in the public notice.

### § 52.44 Expenditure time limitation.

Each recipient government shall appropriate or obligate payments for basic services before the end of the six-month period which begins the day following receipt of a payment.

### § 52.45 Applicability of other Federal laws.

Except as otherwise provided in the Act or this part, payments are not subject to Federal civil laws applicable only to Federally assisted programs or to Federal grants, loans or contracts. The Criminal Code of the United States (title 18, U.S.C.) shall be applicable to all criminal offenses relating to the expenditure, accounting or reporting of payments by a recipient government receiving such payments under the Act or this part.

### § 52.46 Interest bearing accounts.

Recipient governments may temporarily deposit their payments in interest bearing accounts. Where payments are held in an interest bearing account, the interest earned on those funds is subject to the expenditure restrictions and prohibitions of the Act and this part.

## Subpart E—Nondiscrimination by Recipient Governments

### § 52.60 Purpose.

The purpose of this subpart is to implement section 207 of the Act which provides that no person in the United States shall, on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State, territorial or local government, which government receives payments. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in § 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or Title VIII of the Act of April 11, 1968, commonly referred to as the Civil Rights Act of 1968, shall also apply to any such program or activity.

### § 52.61 Incorporation of general revenue sharing nondiscrimination regulations.

The nondiscrimination provisions of § 207 of the Act are substantively identical to the corresponding nondiscrimination requirements in §§ 122, 124, and 125 of the Revenue Sharing Act. Therefore, the regulations promulgated in 31 CFR part 51, Subpart E, by the Director pursuant to the Revenue Sharing Act are hereby incorporated by reference into this subpart and shall apply to payments to recipient governments.

## Subpart F—Fiscal Procedures and Auditing

### § 52.80 Procedures applicable to the use of payments.

A recipient government which receives payments under the Act shall:

(a) Provide for the expenditure of payments in accordance with § 52.43 of this part.

(b) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Director to be prepared therefrom, and

(2) Permit the tracing of payments to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of this part. Tracing of payments requires that vouchers in support of expenditures funded by the Act shall be identified. Such tracing of payments can be made by one of the following three means:

(i) Maintain a separate set of fund accounts;

(ii) Maintain a separate bank account; or

(iii) Keep a memorandum record of the voucher numbers and amounts for the expenditures funded by payments.

(c) Account for payments using at a minimum the same fiscal accounting and internal audit procedures as are used by the recipient government for expenditures from its own source revenues.

(d) Provide to the Director and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Director may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

### § 52.81 Auditing and evaluation.

(a) *In general.* The Director shall provide for such auditing and evaluation as may be necessary to insure that recipient governments comply with the Act and the regulations of this part. Audits, reviews and evaluations made under this section shall be conducted in a manner which is consistent with procedures required of recipients of revenue sharing entitlements by regulations in 31 CFR Part 51, Subpart F, published pursuant to the Revenue Sharing Act.

(b) *Audits required.* Payments shall be included as a part of any independent audit of a State or local government in accordance with generally accepted auditing standards as required under the Revenue Sharing Act pursuant to regulations set forth in 31 CFR Part 51, Subpart F.

### § 52.82 Scope of audits.

(a) *In general.* The scope of each audit required under § 52.81(b) of this part shall be of the same financial type as provided by revenue sharing audit regulations (31 CFR Part 51, Subpart F). There shall also be included a compliance type audit as described in "The Standards for Audit of Governmental Organizations, Programs, Activities & Functions", issued in 1972 by the Comptroller General of the United States, and as described further in audit guides published by the Office of Revenue Sharing.

### § 52.83 Retention of audit workpapers.

Audit workpapers and related audit reports shall be retained for three years after the issuance of the audit report, and shall be available upon request to the Director and the Comptroller General or to their representatives.

### § 52.84 Requirement to submit audit reports.

The Director may, upon request, require the chief executive officer of a recipient government to submit a copy of its audit reports.

## Subpart G—Proceedings for Reduction in Payments, Withholding, or Repayment

### § 52.100 Incorporation of hearing procedures.

The regulations appearing in 31 CFR part 51, Subpart G, §§ 51.200–51.225, governing procedure and practice requirements for reasonable notice and opportunity for a hearing, are hereby incorporated by reference into this subpart to the extent they are consistent with the Act.

## PART 53—INSTRUCTIONS OF THE SECRETARY OF THE TREASURY CONCERNING WRONGFULLY WITHHELD GOLD COIN AND GOLD BULLION DELIVERED AFTER JANUARY 17, 1934

### § 53.1 Wrongfully withheld gold coin and gold bullion delivered after January 17, 1934.

The order of the Secretary of the Treasury dated January 15, 1934, as amended, supplementing the order of December 28, 1933, requiring the delivery of gold coin and gold bullion to the Treasurer of the United States provides, in part, as follows:

> * * * I, Henry Morgenthau, Jr., Secretary of the Treasury, do hereby fix midnight of Wednesday, January 17, 1934, as the expiration of the period within which any gold coin or gold bullion may be paid and delivered to the Treasurer of the United States in compliance with the requirements contained in such Order of December 28, 1933, as amended.
>
> In the event that any gold coin or gold bullion withheld in noncompliance with said Order and of this Order are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, or to any fiscal agent of the United States, there shall be paid therefor only such part or none of the amount otherwise payable therefor as the Secretary of the Treasury may from time to time prescribe and the whole or any balance shall be retained and applied to the penalty payable for failure to comply with the requirements of such Order and of this Order. The acceptance of any such coin or bullion after January 17, 1934, whether or not a part or all of the amount otherwise payable therefor is so retained, shall be without prejudice to the right to collect by suit or otherwise the full penalty provided in Section 11(n) of the Federal Reserve Act, as amended, less such portion of the penalty as may have been retained as hereinbefore provided.

Subject to the rights reserved in said Order of January 15, 1934, supplementing the order of December 18, 1933, requiring the delivery of gold coin and gold bullion to the Treasurer of the United States and without prejudice to the right to alter or amend these instructions from time to time by notice to the Treasurer of the United States, the United States mints and assay offices, and the Federal Reserve banks, I do hereby prescribe that in the event that any gold coin or gold bullion held in noncompliance with said order of December 28, 1933, as amended, and said order of January 15, 1934, are offered after January 17, 1934, to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office or to any fiscal agent of the United States, the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office, and the fiscal agents of the United States shall pay for such gold coin the dollar face amount thereof, and for gold bullion $20.67 an ounce. Member banks of the Federal Reserve System may receive such gold coin and gold bullion for account of the Treasurer of the United States and forthwith forward the same to the Secretary of the Treasury, the Treasurer of the United States, any United States mint or assay office or any fiscal agent of the United States, whichever is nearest.

(Sec. 3, 48 Stat. 2; 12 U.S.C. 248(n))

[29 FR 5557, Apr. 25, 1964]

## PART 55—PROCLAMATION FIXING THE WEIGHT OF THE GOLD DOLLAR

Sec.
55.1 Weight of the gold dollar.
55.2 Force and effect of President's Proclamation of January 31, 1934.

### § 55.1 Weight of the gold dollar.

I, Franklin D. Roosevelt, President of the United States, do hereby proclaim, order, direct, declare and fix the weight of the gold dollar to be $15\frac{5}{21}$ grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation.

(Sec. 43, 48 Stat. 51, as amended; 31 U.S.C. 821)

[Proclamation 2072, Jan. 31, 1934]

### § 55.2 Force and effect of President's Proclamation of January 31, 1934.

This proclamation shall remain in force and effect until and unless repealed or modified by act of Congress or by subsequent proclamation; and notice is hereby given that I reserve the right by virtue of the authority vested in me to alter or modify this proclamation as the interest of the United States may seem to require.

(Sec. 43, 48 Stat. 51, as amended; 31 U.S.C. 821)

[Proclamation 2072, Jan. 31, 1934]

## PART 56—DOMESTIC GOLD AND SILVER OPERATIONS SALE OF SILVER

Sec.
56.1 Conditions upon which silver will be sold.
56.2 Sales price.

### § 56.1 Conditions upon which silver will be sold.

The General Services Administration, as agent for the Treasury Department, will conduct periodic sales of silver as agreed upon between GSA and the Treasury Department. Sales will be under competitive bidding procedures established by agreement between GSA and the Treasury Department. Details of the bidding and selling procedures are obtainable by telephone or by writing to General Services Administration, Property Management and Disposal Service, Industry Materials Division, Metals Project, Washington, D.C. 20405.

(Sec. 209, 79 Stat. 257; 31 U.S.C. 405a-1)

[32 FR 13380, Sept. 22, 1967]

### § 56.2 Sales price.

Sales of silver will be at prices offered through the competitive bidding procedures referred to in § 56.1, and accepted by the GSA.

(Sec. 209, 79 Stat. 257; 31 U.S.C. 405a-1)

[32 FR 13380, Sept. 22, 1967]

NOTE: Subject to the provisions of Pub. Law 90-29, approved June 24, 1967, silver certificates will continue to be exchangeable for silver on demand until June 24, 1968, and as specified in the first paragraph of the notice appearing at 29 FR 3819, March 27, 1964.

## PART 81—NEWLY-MINED DOMESTIC SILVER REGULATIONS OF 1965

Sec.
81.1 Scope.
81.2 Definitions.
81.3 Forms.
81.4 Revocation or modification.
81.5 Silver which will be received.
81.6 Certificates.
81.7 Evidence which may be required.
81.8 Records.
81.9 Reports.
81.10 Agreement relating to records.
81.11 Settlement for silver delivered.

AUTHORITY: Secs. 104, 107, 79 Stat. 255; 31 U.S.C. 394, 397.

SOURCE: 32 FR 195, Jan. 10, 1967, unless otherwise noted.

NOTE: For nomenclature changes affecting this part, see Order No. 202-2, 40 FR 32121, July 31, 1975.

### § 81.1 Scope.

The regulations in this part relate to the receipt by the U.S. mints and assay offices, pursuant to the provisions of section 104 of the Coinage Act of 1965, P.L. 89-81, of silver mined in the United States or any place subject to the jurisdiction thereof.

### § 81.2 Definitions.

As used in this part, the term "person" means an individual, partnership, association, or corporation. The authority conferred in the regulations in this part upon a U.S. mint or assay office is conferred upon the person locally in charge of such mint or assay office, acting in accordance with the instructions of the Secretary of the Treasury or his delegate.

### § 81.3 Forms.

Any form, the use of which is prescribed in this part, may be obtained at or on written request to any U.S. mint or assay office or at the Office of Assistant Secretary (International Affairs), Treasury Department, Washington, D.C. 20220.

### § 81.4 Revocation or modification.

The provisions of this part may be revoked or modified at any time.

### § 81.5 Silver which will be received.

The U.S. mints and assay offices, under the conditions hereinafter specified, and subject to the appropriate regulations governing the mints and assay offices will receive:

(a) Silver which has been mined subsequent to July 23, 1965, from natural deposits in the United States or any place subject to the jurisdiction thereof and was tendered to the mint or assay office within 1 year after the month in which the ore from which it is derived was mined;

(b) Silver which forms a part of a mixture of a newly mined domestic, secondary, and/or foreign silver provided the amount of the silver so received does not exceed that amount of the mixture mined subsequent of July 23, 1965, from natural deposits in the United States or any place subject to the jurisdiction thereof within 1 year (computed from the first day of the month following the month in which the ore from which it is derived was mined) preceding the date such mixture is tendered to the mint or assay office.

### § 81.6 Certificates.

Every person delivering silver to a U.S. mint or assay office pursuant to the provisions of this part shall file with each delivery a properly executed certificate on form TSA-100 and supporting certificate or certificates of the miner or miners on forms TSA-200 or TSA-200A, whichever is appropriate, containing the information called for in such forms.

### § 81.7 Evidence which may be required.

Persons delivering silver under the provisions of this part shall furnish such further evidence as may from time to time be requested by the Office of Assistant Secretary (International Affairs), including affidavits, sworn reports, and sworn abstracts from books of account of any mines or any or all smelters or refineries handling such silver.

### § 81.8 Records.

Every person delivering silver pursuant to this part, and every person owning or operating a smelter or refinery at which silver to be delivered under this part is mixed with secondary or foreign silver, or both, shall keep accurate records of all acquisitions, by mining or otherwise, and of all dispositions of silver mined subsequent to July 23, 1965, including, among other things, records of the date when such silver was mined, acquired, and disposed of. Such records shall be available for examination by a representative of the Treasury Department until the end of the fifth calendar year (or if such person's records are kept on a fiscal year basis until the end of the fifth fiscal year) following the date of the transaction to which they relate.

### § 81.9 Reports.

Every person delivering silver to a U.S. mint or assay office pursuant to this part shall file with the Assistant Secretary (International Affairs), on or before the 25th day of each month after the date the first delivery is made, a report on form TSA-300 covering the preceding calendar month. The first report shall cover the period from July 23, 1965 to the end of the calendar month preceding the date of the report.

### § 81.10 Agreement relating to records.

Every person who delivers to a U.S. mint or assay office, in accordance with § 81.5(b), silver which has been mixed with secondary or foreign silver at a smelter or refinery, other than that of the person making the delivery, shall, upon request of the Assistant Secretary (International Affairs), also file with each delivery of such silver on agreement properly executed under oath by a duly authorized officer of such other smelter or refinery, that records will be kept in accordance with the provisions of § 81.8 and that such records will be available for examination by a representative of the Assistant Secretary (International Affairs), for at least 5 years following the date of the transaction to which they relate.

### § 81.11 Settlement for silver delivered.

The U.S. mints and assay offices shall pay for silver delivered in accordance with this part at the rate of $1.25 per fine troy ounce but shall retain from such purchase price an amount equal to all mint charges.

## PART 90—TABLE OF CHARGES AND REGULATIONS OF THE MINTS AND ASSAY OFFICES OF THE UNITED STATES FOR PROCESSING SILVER AND ASSAYING BULLION, METALS, AND ORES [1]

Sec.
90.1 Application and general regulations.
90.2 Silver bullion which may be accepted.
90.3 Requisites for acceptable bullion as to fineness.
90.4 Return or rejection of silver deposited.
90.5 Charges for treating and processing silver.
90.6 Charges for special assays and assays of ores and fine gold certification.
90.7 Transactions not subject to various treating and processing charges.
90.8 Settlement for transactions conducted.

AUTHORITY: 5 U.S.C. 301, R.S. 3524, as amended, R.S. 3546, 48 Stat. 337; 31 U.S.C. 332, 360.

SOURCE: 35 FR 19177, Dec. 18, 1970, unless otherwise noted.

### § 90.1 Application and general regulations.

(a) *Scope.* This part prescribes policies, regulations, and charges of the U.S. Mints and Assay Offices governing the acceptance and treatment of silver deposited for purchase, under provisions of the Newly-Mined Domestic Silver Regulations of 1965, the regulations of the Office of Domestic Gold and Silver Operations (Parts 81 and 93 of this chapter, respectively) and Title 31 of the United States Code.

(b) *Assaying, melting, parting and refining, and other related services.* The charges for the various operations on bullion deposited, for the preparation of bars, and for the assay of samples of bullion and ores are fixed from time to time by the Director of the Mint, with the concurrence of the Secretary of the Treasury, so as to equal but not exceed in their judgment the actual average costs. The U.S. Mints and Assay Offices shall impose appropriate charges for services performed under these regulations.

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[1] Coinage Mints are located at Philadelphia, Pa., and Denver, Colo.; U.S. Assay Offices are located at New York, N.Y., and San Francisco, Calif. Deposits are not accepted in Washington, D.C.

(c) *Metals not returned to depositors.* Metals other than silver contained in bullion accepted will not be returned to the depositor, nor will credit or payment be given for them.

### § 90.2 Silver bullion which may be accepted.

The U.S. Mints and Assay Offices will accept for purchase, silver which meets the requisites set forth in Parts 81 and 93 of this chapter, and the general regulations in this part.

### § 90.3 Requisites for acceptable bullion as to fineness.

(a) Silver governed by the regulations in Parts 81 and 93 of this chapter must contain at least 600 parts of silver in 1,000, to be eligible for deposit under the regulations in this part.

(b) In addition to this requisite as to fineness, deposits in this category must also be accompanied by duly executed affidavits as evidence that such silver is eligible. Forms for this purpose are prescribed in Part 93 of this chapter.

### § 90.4 Return or rejection of silver deposited.

(a) *Unsatisfactory silver bullion.* Any silver bullion that fails to meet the necessary requisites set forth in Parts 81 and 93 of this chapter, and this part, or that is unsuitable for mint operations, shall not be accepted, but shall be returned according to provisions of paragraph (b) of this section.

(b) *Return of bullion.* Subject to payment in cash to the Government for charges incurred, bullion may be returned to the depositor at any time before settlement is made or payment is tendered therefor, and thereafter at the option of the superintendent of the Mint or the officer in charge of the Assay Office handling the bullion.

### § 90.5 Charges for treating and processing silver.

(a) *Melting charges.* A melting charge of $5 shall be imposed for the first 1,000 gross troy ounces of each deposit of bullion. An additional melting charge of 50 cents shall be imposed for each additional 100 gross troy ounces or fraction thereof. These rates shall be applied to the after melting gross weight of the deposit.

(b) *Excess melting loss charge.* When there is a melting loss in excess of 15 percent of the before melting weight of a deposit of bullion, an additional melting charge of $3 shall be imposed for the first 100 gross troy ounces. An additional melting charge of $1 shall be imposed in this case for each additional 100 gross troy ounces or fraction thereof. These additional rates shall be applied to the before melting gross weight of the deposit.

(c) *Abnormal treatment charges.* At the discretion of the superintendent of the Mint or the officer in charge of the Assay Office, deposits of bullion which require abnormal treatment shall be subjected to additional charges equal to the extra cost, including remelting and retreatment if necessary. When charges for abnormal treatment are assessed, a charge will not be made for an excess melting loss.

(d) *Parting and refining charge (rate per gross troy ounce to the nearest hundredth)—Silver Bullion.*

| Silver content | Charge (cents) |
|---|---|
| 600 to 850 thousandths | 12 |
| 850¼ to 995¾ thousandths | 6 |

### § 90.6 Charges for special assays and assays of ores and fine gold certification.

(a) *Bullion Special Assays.* Gold or silver bullion samples for special assay will be accepted at the U.S. Assay Office in New York and at the U.S. Mint in Denver. Charges will be in accordance with the following table of charges:

CHARGES PER ASSAY

| | Gold or silver bullion (under 800 base metal) | Plated or filled goods and white gold |
|---|---|---|
| Gold | $11 | $12 |
| Silver | 11 | 12 |
| Gold and silver (same sample) | 19 | 23 |
| Additional charge when the sample contains any of the platinum group metals | 5 | 5 |

(b) *Assay of ores.* Assays of ore samples will be made at the U.S. Mint in Denver. The charge for each metal determined will be:

| | Charge |
|---|---|
| Gold | $5 |
| Silver | 5 |
| Gold and silver (same sample) | 8 |
| Lead | 8 |
| Zinc | 8 |
| Copper | 7 |

[40 FR 16844, Apr. 15, 1975]

### § 90.7 Transactions not subject to various treating and processing charges.

(a) *Deposits exempt from melting charges.* (1) Uncurrent U.S. coin.

(2) Silver bullion of at least 999 thousandths fineness when a satisfactory assay can be obtained without melting.

(b) *Deposits exempt from parting and refining charges.* Deposits of domestic mutilated or uncurrent silver coin received in accordance with Part 100 of this chapter, are not subject to charges for parting and refining, except as provided in § 90.5.

### § 90.8 Settlement for transactions conducted.

(a) *Advance settlement.* When the approximate fineness of bullion containing 5,000 or more ounces of silver may be readily determined, settlement of 90 percent of the value may be made at the discretion of the superintendent or officer in charge. If the fineness is closely determined by assay, and the bullion is awaiting remelting and reassay for exact determination, settlement of 98 percent of the value may be made. Other advances may be authorized by the Secretary of the Treasury. In any case of an advance the depositor must give a written guaranty that the value of the deposit is at least equal to the amount advanced.

(b) *Statement of charges.* The detailed memorandum of the weight of bullion after melting, the report of the Assayer as to fineness, the value of the bullion deposited and the amount of the charges shall be given to the depositor.

(c) *Payment for silver bullion deposits.* Payment for silver bullion is made, in so far as practicable, in the order in which the deposits are received, by check drawn in favor of the depositor or to such other person as he may designate. In no case is a check in payment of a deposit drawn in favor of any officer or employee of the institution where the deposit is made, and in no case may any person employed in the institution act as agent for the depositor. Checks may be sent by ordinary mail at the risk of the payee or by registered mail at his request and expense.

## PART 91—REGULATIONS GOVERNING CONDUCT IN OR ON THE BUREAU OF THE MINT BUILDINGS AND GROUNDS

Sec.

91.1 Authority.
91.2 Applicability.
91.3 Recording presence.
91.4 Preservation of property.
91.5 Compliance with signs and directions.
91.6 Nuisances.
91.7 Gambling.
91.8 Alcoholic beverages, narcotics, hallucinogenic and dangerous drugs.
91.9 Soliciting, vending, debt collection, and distribution of handbills.
91.10 Photographs.
91.11 Dogs and other animals.
91.12 Vehicular and pedestrian traffic.
91.13 Weapons and explosives.
91.14 Penalties and other law.

AUTHORITY: 5 U.S.C. 301, by delegation from the Administrator of General Services, 35 FR 14426, and Treasury Department Order 177-25 (Revision 2), 38 FR 21947.

SOURCE: 34 FR 503, Jan. 14, 1969, unless otherwise noted.

### § 91.1 Authority.

The regulations in this part governing conduct in and on the Bureau of the Mint buildings and grounds located as follows: U.S. Mint, Colfax, and Delaware Streets, Denver, Colorado; U.S. Bullion Depository, Fort Knox, Kentucky; U.S. Assay Office, 32 Old Slip New York, New York; U.S. Mint, 5th and Arch Streets, Philadelphia, Pennsylvania; U.S. Assay Office, 155 Hermann Street, and the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California; and U.S. Bullion Depository, West Point, New York; are promulgated pursuant to the authority vested in the Secretary of the Treasury, including 5 U.S.C. 301, and that vested in him by delegation from the Administrator of General Services, 38 FR 20650 (1973), and in accordance with the authority vested in the Director of the Mint by Treasury Department Order No. 177-25 Revision 2), dated August 8, 1973, 38 FR 21947 (1973).

[38 FR 24897, Sept. 11, 1973]

### § 91.2 Applicability.

The regulations in this part apply to the buildings and grounds of the Bureau of the Mint located as follows: U.S. Mint, Colfax and Delaware Streets, Denver, Colorado; U.S. Bullion Depository, Fort Knox, Kentucky; U.S. Assay Office, 32 Old Slip, New York, New York; U.S. Mint, Fifth and Arch Streets, Philadelphia, Pennsylvania; U.S. Assay Office, 155 Hermann Street, and the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California; and U.S. Bullion Depository, West Point, New York; and to all persons entering in or on such property. Unless otherwise stated herein, the Bureau of the Mint buildings and grounds shall be referred to in these regulations as the "property".

[38 FR 24897, Sept. 11, 1973]

### § 91.3 Recording presence.

Except as otherwise ordered, the property shall be closed to the public during other than normal working hours. The property shall also be closed to the public when, in the opinion of the senior supervising official of any Bureau of the Mint establishment covered by these regulations, or his delegate, an emergency situation exists, and at such other times as may be necessary for the orderly conduct of the Government's business. Admission to the property during periods when such property is closed to the public will be limited to authorized individuals who will be required to sign the register and/or display identification documents when requested by the guard.

### § 91.4 Preservation of property.

It shall be unlawful for any person without proper authority to wilfully destroy, damage, deface, or remove property or any part thereof or any furnishings therein.

### § 91.5 Compliance with signs and directions.

Persons in and on the property shall comply with the instructions of uniformed Bureau of the Mint guards (U.S. Special Policemen), other authorized officials, and official signs of a prohibitory or directory nature.

### § 91.6 Nuisances.

The use of loud, abusive, or profane language, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other disorderly conduct on the property is prohibited. The throwing of any articles of any kind in, upon, or from the property and climbing upon any part thereof, is prohibited. The entry, without specific permission, upon any part of the property to which the public does not customarily have access, is prohibited.

### § 91.7 Gambling.

(a) Participating in games for money or other property, the operation of gambling devices, the conduct of a lottery or pool, the selling or purchasing of numbers tickets, or any other gambling in or on the property, is prohibited.

(b) Possession in or on the property of any numbers slip or ticket, record, notation, receipt, or other writing of a type ordinarily used in any illegal form of gambling such as a tip sheet or dream book, unless explained to the satisfaction of the head of the bureau or his delegate, shall be prima facie evidence that there is participation in an illegal form of gambling in or on such property.

[34 FR 503, Jan. 14, 1969, as amended at 36 FR 3523, Feb. 26, 1971]

### § 91.8 Alcoholic beverages, narcotics, hallucinogenic and dangerous drugs.

Entering or being on the property, or operating a motor vehicle thereon by a person under the influence of alcoholic beverages, narcotics, hallucinogenic or dangerous drugs is prohibited. The use of any narcotic, hallucinogenic or dangerous drug in or on the property is prohibited. The use of alcoholic beverages in or on the property is prohibited except on occasions and on property upon which the Director of the Mint has for appropriate official uses granted and exemption permit in writing.

[38 FR 24898, Sept. 11, 1973]

### § 91.9 Soliciting, vending, debt collection, and distribution of handbills.

The unauthorized soliciting of alms and contributions, the commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, in or on the property, is prohibited. This rule does not apply to Bureau of the Mint concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval from the Director of the Mint, or the delegate of the Director.

### § 91.10 Photographs.

The taking of photographs on the property is prohibited, without the written permission of the Director of the Mint.

### § 91.11 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, shall not be brought upon the property for other than official purposes.

### § 91.12 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of guards and all posted traffic signs.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on the property is prohibited.

(c) Parking in or on the property is not allowed without a permit or specific authority. Parking without authority, parking in unauthorized locations or in locations reserved for other persons or continuously in excess of 8 hours without permission, or contrary to the direction of a uniformed Bureau of the Mint guard, or of posted signs, is prohibited.

(d) This paragraph may be supplemented from time to time with the approval of the Director of the Mint, or the delegate of the Director, by the issuance and posting of such specific traffic directives as may be required and when so issued and posted such directives shall have the same force and effect as if made a part hereof.

### § 91.13 Weapons and explosives.

No person while on the property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

### § 91.14 Penalties and other law.

Whoever shall be found guilty of violating any of the regulations in this part while on the property is subject to a fine of not more than $50, or imprisonment of not more than 30 days, or both (see 40 U.S.C. 318c. Nothing contained in the regulations in this part shall be construed to abrogate any other Federal laws or regulations or those of any State or municipality applicable to the property referred to in § 91.2 and governed by the regulations in this part.

## PART 92—BUREAU OF THE MINT OPERATIONS AND PROCEDURES

Sec.
92.1 Receipt of bullion.
92.2 Handling of bullion.

Sec.
92.3 Redemption and deposit of U.S. coin.
92.4 Sale of silver.
92.5 Manufacture of medals.
92.6 Sale of "list" medals.
92.7 Manufacture and sale of "proof" coins.
92.8 Uncirculated Mint Sets.
92.9 Procedure governing availability of Bureau of the Mint records.
92.10 Appeal.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 35 FR 19178, Dec. 18, 1970, unless otherwise noted.

### § 92.1 Receipt of bullion.

As a matter of expedience and convenience to the public, the superintendents and officers in charge of the Mint institutions are authorized to receive newly mined domestic silver bullion, as provided by Parts 81 and 93 of this chapter, for deposit by express or mail. In cases where reasonable doubts may arise as to the ownership and eligibility or any other pertinent factor concerning bullion, the superintendents and officers in charge may decline to receive deposits unless made in person. When silver bullion is received by express or mail, or when formal receipts are not requested by the depositors of silver bullion, memorandum receipts are issued to the depositors. Whenever the depositor of silver requests a formal receipt, he is given a receipt on Form 7a for the before-melting weight of his deposit. Receipts on Form 7a must be surrendered, properly indorsed by the depositor at the time payment is made for the silver bullion represented thereby. If the depositor of silver bullion loses his receipt on Form 7a, payment for his deposit will not be made to him until he shall have posted an indemnity bond for double the value of his deposit.

### § 92.2 Handling of bullion.

(a) All bullion deposited at any of the Mints or Assay Offices is weighed, when practicable, in the presence of the depositor or his agent, and the weight is verified by an authorized official or competent employee of the Mint or Assay Office. Weights are recorded in troy ounces and hundredths of an ounce. In receiving and weighing deposits, fractions of one-hundredth of an ounce are disregarded. When several parcels are deposited by the same depositor at the same time, they may be weighed separately at his request, but they will be assayed separately only when separate melting charges are assessed for each parcel assayed.

(b) The Assayer takes at least two samples in sufficient portions for assay from each deposit of bullion. The percentages of the gold, silver and base metal contained, as well as the charges to which the deposit is subject, are indicated by the Assayer on a special form provided for that purpose, which is signed by the Assayer. This form also contains the depositor's name, the number and the date of the deposit, the class of bullion, the weight before and after melting and the deductions, if any, to which the deposit has been subjected. The depositor will not be paid for any gold contained in silver deposits. The depositor should be informed of such gold content and given the opportunity to withdraw the deposit before processing and purchase.

### § 92.3 Redemption and deposit of U.S. coin.

(a) U.S. gold coin eligible for acceptance if of legal weight, is redeemed at face value. If U.S. gold coin is worn or mutilated, it is received as standard metal without previous melt or assay and and it is redeemed as bullion at the rate of $20.67+ per ounce of fine gold.

(b) The regulations governing the redemption and exchange of silver coins and minor coins are set forth in Part 100 of this chapter.

### § 92.4 Sale of silver.

See Part 56 of this chapter.

### § 92.5 Manufacture of medals.

With the approval of the Director of the Mint, dies for medals of a national character designated by Congress may be executed at the Philadelphia Mint, and struck in such field offices of the Mints and Assay Offices as the Director shall designate. Application for the manufacture of such medals may be made by letter to the Director of the

Mint, Treasury Department, Washington, D.C. 20220.

### § 92.6 Sale of "list" medals.

Medals on the regular Mint list, when available, are sold to the public at a charge sufficient to cover their cost, and to include mailing cost when mailed. Copies of the list of medals available for sale and their selling prices may be obtained from the Director of the Mint, Washington, D.C.

### § 92.7 Manufacture and sale of "proof" coins.

"Proof" coins, i.e., coins prepared from blanks specially polished and struck, are made as authorized by the Director of the Mint and are sold at a price sufficient to cover their face value plus the additional expense of their manufacture and sale. Their manufacture and issuance are contingent upon the demands of regular operations. Information concerning availability and price may be obtained from the Director of the Mint, Treasury Department, Washington, D.C. 20220.

### § 92.8 Uncirculated Mint Sets.

Uncirculated Mint Sets, i.e., specially packaged coin sets containing one coin of each denomination struck at the Mints at Philadelphia and Denver, and the Assay Office at San Francisco, will be made as authorized by the Director of the Mint and will be sold at a price sufficient to cover their face value plus the additional expense of their processing and sale. Their manufacture and issuance are contingent upon demands of regular operations. Information concerning availability and price may be obtained from the Director of the Mint, Treasury Department, Washington, D.C. 20220.

### § 92.9 Procedure governing availability of Bureau of the Mint records.

(a) *Regulations of the Office of the Secretary adopted.* The regulations on the Disclosure of Records of the Office of the Secretary and other bureaus and offices of the Department issued under 5 U.S.C. 301 and 552 and published as Part 1 of this title, 32 F.R. No. 127, July 1, 1967, except for § 1.7 of this title entitled "Appeal", shall govern the availability of Bureau of the Mint records.

(b) *Determination of availability.* The Director of the Mint delegates authority to the following Mint officials to determine, in accordance with Part 1 of this title, which of the records or information requested is available, subject to the appeal provided in § 92.10: The Deputy Director of the Mint, Division Heads in the Office of the Director, and the Superintendent or Officer in Charge of the field office where the record is located.

(c) *Requests for identifiable records.* A written request for an identifiable record shall be addressed to the Director of the Mint, Washington, D.C. 20220. A request presented in person shall be made in the public reading room of the Treasury Department, 15th Street and Pennsylvania Avenue NW., Washington, DC, or in such other office designated by the Director of the Mint.

### § 92.10 Appeal.

Any person denied access to records requested under § 92.9 may file an appeal to the Director of the Mint within 30 days after notification of such denial. The appeal shall provide the name and address of the appellant, the identification of the record denied, and the date of the original request and its denial.

## PART 93—DOMESTIC GOLD AND SILVER OPERATIONS PROCEDURES AND DESCRIPTIONS OF FORMS

### Subpart A—Procedures

Sec.
93.5 Deposit of newly-mined domestic silver with a mint or assay office.
93.7 Sale of silver.
93.8 Informal consultations.
93.9 Rules governing availability of information.

### Subpart B—Description of Forms and Required Statements

93.40 Description of; copies of forms.

FORMS RELATING TO SILVER MATTERS

93.75 Forms prescribed for deposits of silver under section 104 of the Act of July 23, 1965.

AUTHORITY: R.S. 161, 5 U.S.C. 301.

SOURCE: 33 FR 5798, Apr. 16, 1968, unless otherwise noted.

NOTE: For nomenclature changes affecting this part, see Order No. 202-2, 40 FR 32121, July 31, 1975.

## Subpart A—Procedures

### § 93.5 Deposit of newly-mined domestic silver with a mint or assay office.

Any owner of newly-mined domestic silver, mined subsequently to July 23, 1965, as defined in the Newly-Mined Domestic Silver Regulations of 1965 (Part 81 of this chapter), may deposit such silver at the mints or assay offices; return for such silver is made in accordance with such regulations. Deposits of newly-mined domestic silver must be accompanied by duly executed affidavits as evidence that such silver is eligible for deposit. Silver of this category will be accepted provided it contains at least 600 parts in 1,000 of silver. Disposition of gold contained in deposits of silver shall be determined by the Assistant Secretary (International Affairs). No payment or return will be made for other metal contained in the deposit.

### § 93.7 Sale of silver.

See Part 56 of this chapter.

### § 93.8 Informal consultations.

Officials of the Office of Assistant Secretary (International Affairs) are available by appointment for consultation on problems involving the functions of the Office, interpretation of regulations, or similar matters.

### § 93.9 Rules governing availability of information.

The records of the Office of Assistant Secretary (International Affairs) required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this title, 32 FR 9562, July 1, 1967.

## Subpart B—Description of Forms and Required Statements

### § 93.40 Description of; copies of forms.

The descriptions of the forms and required statements contained in this subpart are not intended to indicate the detail of the forms but are merely general references to the use and content thereof. Copies of the forms may be obtained from the Treasury Department, Office of Assistant Secretary (International Affairs), Washington, D.C. 20220.

### FORMS RELATING TO SILVER MATTERS

### § 93.75 Forms prescribed for deposits of silver under section 104 of the Act of July 23, 1965.

The following forms are required to be submitted to the U.S. mint or assay office in connection with the deposit of newly mined domestic silver pursuant to section 104 of the Act of July 23, 1965 (Part 81 of this chapter).

(a) *Form TSA-100: Certificate by owner relative to silver mined subsequent to July 23, 1965.* This certificate is required to be submitted by the owner with each deposit of silver and requires information concerning the date the silver was mined and the ownership thereof.

(b) *Form TSA-200: Certificate of miner relative to silver mined subsequent to July 23, 1965.* This is a supporting certificate required to be submitted with Form TSA-100 except in cases where Form TSA-200A, set forth in paragraph (c) of this section, is applicable. It must be executed by the miner and contain information concerning the silver, the date it was mined, the location of the mine, the mint, assay office, smelter or refiner to which it was delivered, and the amount thereof.

(c) *Form TSA-200A: Certificate of miner relative to silver taken subsequent to July 23, 1965, from mine dumps and tailing piles which existed as such on midnight July 23, 1965.* This is also a supporting certificate required to be filed with Form TSA-100, whenever applicable in lieu of Form TSA-200 set forth in paragraph (b) of this section. The miner is required to certify that the silver was derived in the manner and from the source set forth therein. Information is also required concerning the date the silver was recovered, the location of the mine, the mint, assay office, smelter, or refiner to which the silver was delivered and the amount thereof.

(d) *Form TSA-300: Report of person delivering silver pursuant to the provisions of section 104 of the Act of July 23, 1965, and the regulations issued thereunder.* This must be submitted monthly by persons delivering silver to a U.S. mint or assay office under section 104 of the Act of July 23, 1965. Information is required concerning acquisitions, holdings, and dispositions of silver mined subsequent to July 23, 1965.

## PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

Sec.
100.2 Scope of regulations; transactions effected through Federal Reserve banks and branches; distribution of coin and currencies.

### Subpart A—In General

100.3 Lawfully held coins and currencies in general.
100.4 Gold coin and gold certificates in general.

### Subpart B—Exchange of Mutilated Paper Currency

100.5 Mutilated paper currency.
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### Subpart C—Exchange of Mutilated Coin

100.10 Mutilated coin; in general.
100.12 Where mutilated coins should be transmitted.
100.13 Criminal penalties.
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### Subpart D—Other Information

100.16 Shipments of coins.
100.17 Exchange of paper and coin to be handled through Federal Reserve banks and branches.
100.18 Location of Federal Reserve banks and branches.
Sec.
100.19 Counterfeit notes to be marked; "redemption" of notes wrongfully so marked.
100.20 Disposition of counterfeit notes and coins.

Authority: Sec. 1, 49 Stat. 938; 31 U.S.C. 773a.

Source: Department Circular 55, Revised, 31 FR 9493, July 13, 1966, unless otherwise noted.

Cross Reference: For regulations of the Federal Reserve System, see 12 CFR Chapter II.

### § 100.2 Scope of regulations; transactions effected through Federal Reserve banks and branches; distribution of coin and currencies.

The regulations in this part govern the exchange of the coin and paper currency of the United States (including national bank notes and Federal Reserve bank notes in process of retirement and Federal Reserve notes). Under authorization in the act approved May 29, 1920, 41 Stat. 655 (31 U.S.C. 476), the Secretary of the Treasury transferred to the Federal Reserve banks and branches the duties and functions performed by the former Assistant Treasurers of the United States in connection with the exchange of paper currency and coin of the United States. Except for the duties in this respect to be performed by the Treasurer of the United States and the Director of the Mint as may be indicated from time to time by the Secretary of the Treasury exchanges of the paper currency and coin of the United States and the distribution and replacement thereof will, so far as practicable, be effected through the Federal Reserve banks and branches. The Federal Reserve banks and branches are authorized and directed to make an equitable and impartial distribution of available supplies of currency and coin in all cases directly to member banks of the Federal Reserve System and to nonmember commercial banks. Applications therefor should be made to the Federal Reserve bank or branch of such bank which serves the territory in which the applicant bank is located. Deliveries to and from member banks and to and from nonmember commercial banks shall be made under such terms and conditions as may be prescribed by the Federal Reserve banks. Nothing in the authorization set forth above shall be regarded as requiring Federal Reserve banks and branches to supply currency and coin to other financial institutions or to the general public.

[Amdt. 1, 31 FR 16226, Dec. 20, 1966]

## Subpart A—In General

### § 100.3 Lawfully held coins and currencies in general.

The official agencies of the Treasury Department will continue to exchange lawfully held coins and currencies of the United States, dollar for dollar, for other coins or currencies which may be lawfully acquired and are legal tender for public and private debts. Paper currency of the United States (including national bank notes and Federal Reserve bank notes in process of retirement and Federal Reserve notes) which has been falsely altered and coins altered to render them available for use as other denominations will not be redeemed since such currency and coins are subject to forfeiture under title 18, U.S. Code, section 492. Persons receiving such currency and coins should notify immediately the nearest local office of the U.S. Secret Service of the Treasury Department and hold the same pending advice from that Service.

### § 100.4 Gold coin and gold certificates in general.

Gold coins, and gold certificates of the type issued before January 30, 1934, are exchangeable, as provided in this part, into other currency or coin which may be lawfully issued.

[40 FR 16844, Apr. 15, 1975]

## Subpart B—Exchange of Mutilated Paper Currency

### § 100.5 Mutilated paper currency.

Lawfully held paper currency of the United States which has been mutilated will be exchanged at its face amount if clearly more than one-half of the original whole note remains. Fragments of such mutilated currency which are not clearly more than one-half of the original whole note will be exchanged at face value only if the Treasurer of the United States is satisfied that the missing portions have been totally destroyed. His judgment shall be based on such evidence of total destruction as he deems necessary and shall be final.

[35 FR 17841, Nov. 20, 1970]

### § 100.6 Destroyed paper currency.

No relief will be granted on account of lawfully held paper currency of the United States which has been totally destroyed.

[35 FR 17841, Nov. 20, 1970]

## Subpart C—Exchange of Mutilated Coin

Source: 34 FR 16427, Oct. 16, 1969, unless otherwise noted.

### § 100.10 Mutilated coin; in general.[1]

(a) Mutilated coins of 90 percent silver are not accepted at their face amount but at their bullion or metal value, calculated at the price fixed by the Director of the Mint in accordance with § 100.14. Mutilated coins which were minted under authority of Public Law 89-81 are accepted at the value at which coins of 90 percent silver of the equivalent denomination would be accepted in similar condition, in accordance with such comparative measurement as is feasible. Mutilated coins which are so defaced or fused together as not to be readily and clearly identifiable as to genuiness and denomination will be accepted at their bullion or metal value. Mutilated minor coins are accepted at their bullion or metal value.

(b) Coins are mutilated when punched, clipped, plugged, fused together, or when so defaced as to be not readily and clearly identifiable as to genuineness and denomination. Coins containing lead, solder, or other substances which will render them unsuitable for coinage metal will not be accepted. Coins that are bent or twisted out of shape, but are readily and clearly identifiable as to genuineness, and coins that have been reduced in weight by natural abrasion only, are not regarded as mutilated, and will be received at face amount.

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[1] Silver coins which have been melted or treated in violation of former Part 82 of this chapter, or any metal resulting from such melting or treating, are subject to forfeiture as provided in section 106 of the Coinage Act of 1965 (79 Stat. 255; 31 U.S.C. 396).

### § 100.12 Where mutilated coins should be transmitted.

Mutilated coins shall not be transmitted to the Federal Reserve bank or branches or to the Treasurer of the United States but should be forwarded to the New York Assay Office.

[35 FR 11020, July 9, 1970]

### § 100.13 Criminal penalties.

Criminal penalties connected with the defacement or mutilation of U.S. coins are provided in United States Code, title 18, section 331.

### § 100.14 Standard silver dollars, subsidiary silver coins, and coins minted under authority of Public Law 89–81.

(a) Mutilated coins will be purchased at the New York Assay Office. They should be transmitted to the Assay Office at the expense and risk of the owner (charges prepaid). Mutilated coins of 90 percent silver will be purchased at the price fixed from time to time by the Director of the Mint, which is approximately the market price of silver bullion on the date purchased, or the monetary value of silver contained in the coins, whichever is lower. Mutilated silver coins shall not be commingled with other types of coins in the shipment.

(b) Mutilated clad coins minted under the authority of Public Law 89-81 will be paid for in accordance with the provisions of § 100.10.

[34 FR 16427, Oct. 16, 1969, as amended at 35 FR 11020, July 9, 1970]

### § 100.15 Minor coins.

Mutilated minor coins (1-cent bronze and 5-cent nickel) will be purchased in lots of not less than 5 pounds of each kind, at a price (the approximate value as metal) fixed from time to time by the Director of the Mint, and should be transmitted at the expense and risk of the owner (charges prepaid). One-cent and 5-cent coins in the same shipment shall be segregated by denomination.

## Subpart D—Other Information

### § 100.16 Shipments of coins.

Coins unfit for further circulation, forwarded for redemption at face value, must be shipped at the expense and risk of the owner. Shipments of subsidiary or minor coins for redemption at face value should be sorted by denomination into packages in sums of multiples of $20. Not more than $1,000 in any silver or clad coin, $200 in 5-cent pieces, or $50 in 1-cent pieces, should be shipped in one bag or package.

### § 100.17 Exchange of paper and coin to be handled through Federal Reserve banks and branches.

By taking advantage of the facilities provided at the Federal Reserve banks and branches for the exchange of paper currency and coin, applicants are enabled to have such transactions effected within a shorter time and at a lower cost for transportation charges, as a general rule, than would be possible through the Treasurer of the United States at Washington. So far as practicable, therefore, such transactions should be handled through the Federal Reserve banks and branches.

### § 100.18 Location of Federal Reserve banks and branches.

The Federal Reserve banks and branches are located in Boston, Mass.; New York, N.Y.; Buffalo, N.Y.; Philadelphia, Pa.; Cleveland, Ohio; Cincinnati, Ohio; Pittsburgh, Pa.; Richmond, Va.; Baltimore, Md.; Charlotte, N.C.; Atlanta, Ga.; New Orleans, La.; Jacksonville, Fla.; Birmingham, Ala.; Nashville, Tenn.; Chicago, Ill.; Detroit, Mich.; St. Louis, Mo.; Louisville, Ky.; Memphis, Tenn.; Little Rock, Ark.; Minneapolis, Minn.; Helena, Mont.; Kansas City, Mo.; Omaha, Nebr.; Denver, Colo.; Oklahoma City, Okla.; Dallas, Tex.; El Paso, Tex.; Houston, Tex.; San Antonio, Tex.; San Francisco, Calif.; Los Angeles, Calif.; Portland, Oreg.; Salt Lake City, Utah; and Seattle, Wash.

### § 100.19 Counterfeit notes to be marked; "redemption" of notes wrongfully so marked.

The act of June 30, 1876 (19 Stat. 64; 31 U.S.C. 424), provides that all U.S. officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit," "altered," or "worthless" upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, "redeem" such notes at the face amount thereof.

### § 100.20 Disposition of counterfeit notes and coins.

All counterfeit notes and coins found in remittances are canceled and delivered to the U.S. Secret Service of the Treasury Department or to the nearest local office of that Service, a receipt for the same being forwarded to the sender. Communications with respect thereto should be addressed to the Director, U.S. Secret Service, Treasury Department, Washington, D.C. 20226.

## PART 101—MITIGATION OF FORFEITURE OF COUNTERFEIT GOLD COINS

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101.1 Purpose and scope.
101.2 Petitions for mitigation.
101.3 Petitions reviewed by Assistant Secretary, Enforcement, Operations, Tariff Affairs.
101.4 Extraction of gold bullion from the counterfeit coins.
101.5 Payment of smelting costs.
101.6 Return of the bullion.
101.7 Exceptions.
101.8 Discretion of the Secretary.

AUTHORITY: 18 U.S.C. 492.

SOURCE: 42 FR 1472, Jan. 7, 1977, unless otherwise noted.

### § 101.1 Purpose and scope.

The purpose of this part is to establish a policy whereby certain purchasers or holders of gold coins who have forfeited them to the United States because they were counterfeit may, in the discretion of the Secretary of the Treasury, recover the gold bullion from the coins. This part sets forth the procedures to be followed in implementing this policy.

### § 101.2 Petitions for mitigation.

(a) *Who may file.* Any person may petition the Secretary of the Treasury for return of the gold bullion of counterfeit gold coins forfeited to the United States, if:

(1) The petitioner innocently purchased or received the coins and held them without the knowledge that they were counterfeit; and,

(2) The petitioner voluntarily submitted the coins to the Treasury Department for a determination of whether they were legitimate or counterfeit; and,

(3) The coins were determined to be counterfeit and were seized by the Treasury Department and forfeited to the United States.

(b) *To whom addressed.* Petitions for mitigation of the forfeiture of counterfeit gold coins should be addressed to the Assistant Secretary, Enforcement, Operations, Tariff Affairs, Department of Treasury, 15th and Pennsylvania Avenue, NW., Washington, D.C. 20220.

(c) *Form.* The petition need not be in any particular form, but must be under oath, and set forth at least the following:

(1) The full name and address of the petitioner;

(2) A description of the coin or coins involved;

(3) The name and address of the person from whom the coins were received or purchased by the petitioner;

(4) The date and place where they were voluntarily submitted for examination;

(5) Any other circumstances relied upon by the petitioner to justify the mitigation;

(6) A statement that the petitioner purchased or received and held the coins without the knowledge that they were counterfeit.

### § 101.3 Petitions reviewed by Assistant Secretary, Enforcement, Operations, Tariff Affairs.

(a) The Assistant Secretary will receive and review all petitions for mitigation of the forfeiture of counterfeit gold coins. He shall conduct such further investigation, and may request such further information from the petitioner as he deems necessary. Petitions will be approved if the Assistant Secretary determines that:

(1) The gold coins have not been previously disposed of by normal procedures;

(2) The petitioner was an innocent purchaser or holder of the gold coins and is not under investigation in connection with the coins at the time of submission or thereafter;

(3) The coins are not needed and will not be needed in the future in any investigation or as evidence in legal proceedings; and

(4) Mitigation of the forfeiture is in the best interest of the Government.

### § 101.4 Extraction of gold bullion from the counterfeit coins.

If the petition is approved, the Assistant Secretary shall then forward the gold coins to the Bureau of the Mint where, if economically feasible, the gold bullion will be extracted from the counterfeit coins. The Bureau of the Mint will then return the bullion to the Assistant Secretary.

### § 101.5 Payment of smelting costs.

The petitioner shall be required to pay all reasonable costs incurred in extracting the bullion from the counterfeit coins, as shall be determined by the Assistant Secretary. Payment must be made prior to the return of the gold bullion to the petitioner.

### § 101.6 Return of the bullion.

After receiving the gold bullion from the Bureau of the Mint, the Assistant Secretary shall notify the petitioner that his petition has been approved and that payment of the smelting costs in an amount set forth in such notice must be made prior to the return of the bullion.

### § 101.7 Exceptions.

The provisions of this part shall not apply where the cost of smelting the gold coins exceeds the value of the gold bullion to be returned.

### § 101.8 Discretion of the Secretary.

The Secretary of the Treasury retains complete discretion to deny any claim of any petitioner when the Secretary believes it is not in the best interest of the Government to return the bullion to the petitioner or when the Secretary is not convinced that the petitoner was an innocent pur; chaser or holder without knowledge that the gold coins were counterfeit.

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

### Subpart A—Definitions

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103.11 Meaning of terms.

### Subpart B—Reports Required To Be Made

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103.22 Reports of currency transactions.
103.23 Reports of transportation of currency or monetary instruments.
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103.41 Dollars as including foreign currency.
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103.44 Disclosure.
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103.46 Enforcement.
103.47 Civil penalty.
103.48 Forfeiture of currency or monetary instruments.
103.49 Criminal penalty.
103.50 Enforcement authority with respect to transportation of currency or monetary instruments.
103.51 Access to records.

APPENDIX—INTERPRETATIONS AND EXEMPTIONS.

AUTHORITY: Sec. 21 of the Federal Deposit Insurance Act, 84 Stat. 1114, 12 U.S.C. 1829b; 84 Stat. 1116, 12 U.S.C. 1951-1959; and the Currency and Foreign Transactions Reporting Act, 84 Stat. 1118, 31 U.S.C. 1051-1122, unless otherwise noted.

SOURCE: 37 FR 6912, Apr. 5, 1972, unless otherwise noted.

## Subpart A—Definitions

### § 103.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

*Bank.* (a) Each agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the laws of any State or of the United States; and

(7) Any other organization chartered under the banking laws of any State and subject to the supervision of the bank supervisory authorities of a State.

(b) Each agent, agency, branch or office within the United States of a foreign bank.

*Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

*Currency.* The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes U.S. silver certificates, U.S. notes and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

*Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

*Financial institution.* Each agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A person who engages as a business in dealing in or exchanging currency as, for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks;

(4) A person who engages as a business in the issuing, selling, or redeeming of travelers' checks, money orders, or similar instruments, except one who does so as a selling agent exclusively or as an incidental part of another business;

(5) A licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

*Foreign bank.* A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

*Investment security.* An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

*Monetary instruments.* Coin or currency of the United States or of any other country, travelers' checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or otherwise in such form that title thereto passes upon delivery. The term includes bank checks, travelers' checks and money orders which are signed but on which the name of the payee has been omitted, but does not include bank checks, travelers' checks or money orders made payable to the order of a named person which have not been endorsed or which bear restrictive endorsements.

*Person.* An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, and all entities cognizable as legal personalities.

*Secretary.* The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

*Transaction in currency.* A transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency is not a transaction in currency within the meaning of this part.

*United States.* The various States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

[37 FR 6912, Apr. 5, 1972, as amended at 38 FR 2175, Jan. 22, 1973; 41 FR 27832, July 7, 1976]

## Subpart B—Reports Required To Be Made

### § 103.21 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

### § 103.22 Reports of currency transactions.

(a) Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary and all information called for in the forms shall be furnished.

(b)(1) Except as otherwise directed in writing by the Assistant Secretary (Enforcement and Operations), this section shall not: (i) Require reports of transactions with Federal Reserve Banks or Federal Home Loan banks; (ii) require reports of transactions between domestic banks; or (iii) require reports by nonbank financial institutions of transactions with commercial banks.

(2) Except as otherwise directed in writing by the Assistant Secretary (Enforcement and Operations), a bank may exempt from the reporting requirement of this section the following:

(i) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States. For the purpose of this subsection, a retail type of business is a business primarily engaged in providing goods to ultimate consumers and for which the business is paid in substantial portion by currency, except that dealerships which provide automobiles, boats or airplanes are not included and their transactions are not exempt from the reporting requirement of this section.

(ii) Deposits or withdrawals of currency from an existing account by an established depositor who is a United States resident and operates a sports arena, race track, amusement park, bar, restaurant, hotel, check cashing service licensed by state or local governments, vending machine company, or theater.

(iii) Deposits, or withdrawals, exchanges of currency or other payments and transfers by local or state governments, or the United States or any of its agencies or instrumentalities.

(iv) Withdrawals for payroll purposes from an existing account by an established depositor who is a United States resident and operates a firm that regularly withdraws more than $10,000 in order to pay its employees in currency.

(c) In each instance the transactions exempted under paragraph (b) of this section must be in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the lawful, domestic business of that customer, or in the case of transactions with a local or state government or the United States or any of its agencies or instrumentalities, in amounts which are customary and commensurate with the authorized activities of the agency or instrumentality. This section does not permit a bank to exempt its transactions with a nonbank financial institution.

(d) A bank may apply to the Secretary for additional authority to grant an exemption to the reporting requirement, not otherwise provided for under paragraph (b) of this section, if the bank believes that circumstances warrant such an exemption. Such requests should be addressed to:

Exemption Staff, Room 1134, Office of Enforcement and Operations, U.S. Treasury Department, Washington, D.C. 20220.

(e) A record of each exemption granted under paragraph (b) of this section and the reason therefor must be made at the time it is granted and all such exemptions must be kept in a centralized list. The record shall include the names and addresses of the banks referred to in paragraph (b)(1)(ii) of this section, as well as the name, address, business, taxpayer identification number, and account number of each depositor that has engaged in currency transactions which have not been reported because of the exemption provided in paragraph (b)(2) of this section. The record concerning the group of depositors exempted under the provisions of paragraph (b)(2) of this section should also indicate whether the exemption covers withdrawals, deposits, or both, as well as the dollar limit of the exemption. Upon the request of the Secretary, a bank shall provide a report containing the list of the bank's customers whose transactions have been exempted in accordance with the provisions of paragraph (b) of this section and such information as the Secretary may require. The exemptions may be reviewed by the Secretary who may require a bank to file the usual reports as prescribed in paragraph (a) of this section with respect to any customer whose transactions have been previously exempted.

(f) Reports required under paragraph (e) of this section must be mailed or otherwise delivered to the Secretary within 30 days after the bank receives the Secretary's request.

[45 FR 37820, June 5, 1980]

### § 103.23 Reports of transportation of currency or monetary instruments.

(a) Each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States, shall make a report thereof. A person is deemed to have caused such transportation, mailing or shipping when he aids, abets, counsels, commands, procures, or requests it to be done by a financial institution or any other person. A transfer of funds through normal banking procedures which does not involve the physical transportation of currency or monetary instruments is not required to be reported by this section.

(b) Each person who receives in the U.S. currency or other monetary instruments in an aggregate amount exceeding $5,000 on any one occasion which have been transported, mailed, or shipped to such person from any place outside the United States with respect to which a report has not been filed under paragraph (a) of this section, whether or not required to be filed thereunder, shall make a report thereof, stating the amount, the date of receipt, the form of monetary instruments, and the person from whom received.

(c) This section shall not require reports by (1) a Federal Reserve bank, (2) a bank, a foreign bank, or a broker or dealer in securities, in respect to currency or other monetary instruments mailed or shipped through the postal service or by common carrier, (3) a commercial bank or trust company organized under the laws of any State or of the United States with respect to overland shipments of currency or monetary instruments shipped to or received from an established customer maintaining a deposit relationship with the bank, in amounts which the bank may reasonably conclude do not exceed amounts commensurate with the customary conduct of the business, industry or profession of the customer concerned, (4) a person who is not a citizen or resident of the United States in respect to currency or other monetary instruments mailed or shipped from abroad to a bank or broker or dealer in securities through the postal service or by common carrier, (5) a common carrier of passengers in respect to currency or other monetary instruments in the possession of its passengers, (6) a common carrier of goods in respect to shipments of currency or monetary instruments not declared to be such by the shipper, (7) a travelers' check issuer or its agent in respect to the transportation of travelers' checks prior to their delivery to selling agents for eventual sale to the public, (8) nor by a person engaged as a business in the transportation of currency, monetary instruments and other commercial papers with respect to the transportation of currency or other monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign persons.

(d) This section does not require that more than one report be filed covering a particular transportation, mailing or shipping of currency or other monetary instruments with respect to which a complete and truthful report has been filed by a person. However, no person required by paragraph (a) or (b) of this section to file a report shall be excused from liability for failure to do so if, in fact, a complete and truthful report has not been filed.

[37 FR 26517, Dec. 13, 1972]

### § 103.24 Reports of foreign financial accounts.

Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Secretary for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. Persons having a financial interest in 25 or more foreign financial accounts need only note that fact on the form. Such persons will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

[42 FR 63774, Dec. 20, 1977]

### § 103.25 Filing of reports.

(a) A report required to be filed by paragraph (a) of § 103.22 shall be filed within 15 days following the day on which the transaction occurred. The reports shall be filed with the Commissioner of Internal Revenue on forms to be prescribed by the Secretary. All information called for in such forms shall be furnished. A copy of each report shall be retained by the financial institution for a period of five years from the date of the report.

(b) Reports required to be filed by § 103.23(a) shall be filed at the time of entry into the United States or at the time of departure, mailing or shipping from the United States, unless otherwise directed or permitted by the Commissioner of Customs. They shall be filed with the Customs officer in charge at any Customs port of entry or departure, or as otherwise permitted or directed by the Commissioner of Customs. If the currency or other monetary instruments with respect to which a report is required do not accompany a person entering or departing from the United States, such reports may be filed by mail on or before the date of entry, departure, mailing or shipping, with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226. They shall be on forms to be prescribed by the Secretary and all information called for in such forms shall be furnished.

(c) Reports required to be filed by § 103.23(b) shall be filed with the Commissioner of Customs within 30 days after receipt of the currency or other monetary instruments. They may be filed with the Customs officer in charge at any port of entry or departure, or by mail addressed to the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, D.C. 20226. They shall be on forms to be prescribed by the Secretary and all information called for in such forms shall be furnished.

(d) Forms to be used in making the reports required by §§ 103.22 and 103.23 may be obtained from any Internal Revenue office; in addition, forms to be used in making the reports required by § 103.23 may be obtained from any office of the Bureau of Customs.

[37 FR 6912, Apr. 5, 1972, as amended at 45 FR 37820, June 5, 1980]

### § 103.26 Identification required.

Before effecting any transaction with respect to which a report is required under paragraph (a) of § 103.22, a financial institution shall verify and record the name and address of the individual presenting a transaction, as well as record the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity for whose or which account such transaction is to be effected. Verification of the identity of an individual who indicates that he is an alien or is not a resident of the United States must be made by passport, alien identification card, or other official document evidencing nationality or residence. Verification of identity in any other case may be by examination of a document normally acceptable as a means of identification when cashing checks, for example, a driver's license or a credit card. In each instance, the method used in verifying the identity of the customer shall be recorded on the report.

[45 FR 37820, June 5, 1980]

## Subpart C—Records Required To Be Maintained

### § 103.31 Determination by the Secretary.

The Secretary hereby determines that the records required to be kept by this subpart have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

### § 103.32 Records to be made and retained by persons having financial interests in foreign financial accounts.

Records of accounts required by § 103.24 to be reported on a Federal income tax return shall be retained by each person having a financial interest in any such account. Such records shall contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each such account during the reporting period. Such records shall be retained for a period of 5 years and shall be kept at all times available for inspection as authorized by law. In the computation of the period of 5 years, there shall be disregarded any period beginning with a date on which the taxpayer is indicted or information instituted on account of the filing of a false or fraudulent

Federal income tax return or failing to file a Federal income tax return, and ending with the date on which final disposition is made of the criminal proceeding.

### § 103.33 Records to be made and retained by financial institutions.

Each financial institution shall retain either the original or a microfilm or other copy or reproduction of each of the following:

(a) A record of each extension of credit in an amount in excess of $5,000, except an extension of credit secured by an interest in real property, which record shall contain the name and address of the person to whom the extension of credit is made, the amount thereof, the nature or purpose thereof, and the date thereof;

(b) A record of each advice, request, or instruction received regarding a transaction which results in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account, or place outside the United States;

(c) A record of each advice, request, or instruction given to another financial institution or other person located within or without the United States, regarding a transaction intended to result in the transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

### § 103.34 Additional records to be made and retained by banks.

(a)(1) With respect to each certificate of deposit sold or redeemed after May 31, 1978, or each deposit or share account opened with a bank after June 30, 1972, a bank shall, within 45 days from the date such a transaction occurs or an account is opened, secure and maintain a record of the taxpayer identification number of the customer involved; or where the account or certificate is in the names of two or more persons, the bank shall secure the taxpayer identification number of a person having a financial interest in the certificate or account. In the event that a bank has been unable to secure, within the 45-day period specified, the required identification, it shall nevertheless not be deemed to be in violation of this section if (i) it has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him. A bank acting as an agent for another person in the purchase or redemption of a certificate of deposit issued by another bank is responsible for obtaining and recording the required taxpayer identification, as well as for maintaining the records referred to in paragraphs (b) (11) and (12) of this section. The issuing bank can satisfy the recordkeeping requirement by recording the name and address of the agent together with a description of the instrument and the date of the transaction.

(2) The 45-day period provided for in paragraph (a) (1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the bank.

(3) A taxpayer identification number required under paragraph (a)(1) of this section need not be secured for accounts or transactions with the following: (i) Agencies and instrumentalities of Federal, State, local or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are (A) ambassadors, ministers, career diplomatic or consular officers, or (B) naval, military or other attaches of foreign embassies and legations, and for the members of their immediate families; (iv) aliens who are accredited representatives of international organizations which are entitled to enjoy privileges, exemptions and immunities as an international organization under the International Organization Immunities Act of December 29,

1945 (22 U.S.C. sec. 288), and the members of their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter, (viii) a person under 18 years of age with respect to an account opened as a part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club and similar installment savings programs provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States. In instances described in paragraphs (a)(3), (viii) and (ix) of this section, the bank shall, within 15 days following the end of any calendar year in which the interest accrued in that year is $10 or more use its best effort to secure and maintain the appropriate taxpayer identification number or application form therefor.

(4) The rules and regulations issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code of 1954 shall determine what constitutes a taxpayer identification number and whose number shall be obtained in the case of an account maintained by one or more persons.

(b) Each bank shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature authority over each deposit or share account;

(2) Each statement, ledger card or other record on each deposit or share account, showing each transaction in, or with respect to, that account;

(3) Each check, clean draft, or money order drawn on the bank or issued and payable by it, except those drawn for $100 or less or those drawn on accounts which can be expected to have drawn on them an average of at least 100 checks per month over the calendar year or on each occasion on which such checks are issued, and which are (i) dividend checks, (ii) payroll checks, (iii) employee benefit checks, (iv) insurance claim checks, (v) medical benefit checks, (vi) checks drawn on government agency accounts, (vii) checks drawn by brokers or dealers in securities, (viii) checks drawn on fiduciary accounts, (ix) checks drawn on other financial institutions, or (x) pension or annuity checks;

(4) Each item in excess of $100 (other than bank charges or periodic charges made pursuant to agreement with the customer), comprising a debit to a customer's deposit or share account, not required to be kept, and not specifically exempted, under paragraph (b)(3) of this section;

(5) Each item, including checks, drafts, or transfers of credit, of more than $10,000 remitted or transferred to a person, account or place outside the United States;

(6) A record of each remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit, of more than $10,000 to a person, account or place outside the United States;

(7) Each check or draft in an amount in excess of $10,000 drawn on or issued by a foreign bank which the domestic bank has paid or presented to a nonbank drawee for payment;

(8) Each item, including checks, drafts or transfers of credit, of more than $10,000 received directly and not through a domestic financial institution, by letter, cable or any other means, from a bank, broker or dealer in foreign exchange outside the United States;

(9) A record of each receipt of currency, other monetary instruments, investment securities or checks, and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from a bank, broker or dealer in foreign exchange outside the United States; and

(10) Records prepared or received by a bank in the ordinary course of business, which would be needed to reconstruct a demand deposit account and

to trace a check in excess of $100 deposited in such account through its domestic processing system or to supply a description of a deposited check in excess of $100. This subparagraph shall be applicable only with respect to demand deposits.

(11) A record containing the name, address, and taxpayer identification number, if available, of the purchaser of each certificate of deposit, as well as a description of the instrument, a notation of the method of payment, and the date of the transaction.

(12) A record containing the name, address and taxpayer identification number, if available, of any person presenting a certificate of deposit for payment, as well as a description of the instrument and the date of the transaction.

[38 FR 2175, Jan. 22, 1973, as amended at 38 FR 3509, Feb. 7, 1973; 43 FR 21672, May 19, 1978]

### § 103.35 Additional records to be made and retained by brokers and dealers in securities.

(a)(1) With respect to each brokerage account opened with a broker or dealer in securities after June 30, 1972, by a person residing or doing business in the United States or a citizen of the United States, such broker or dealer shall within 45 days from the date such account is opened, secure and maintain a record of the taxpayer identification number of the person maintaining the account; or in the case of an account of one or more individuals, such broker or dealer shall secure and maintain a record of the social security number of an individual having a financial interest in that account. In the event that a broker or dealer has been unable to secure the identification required within the 45-day period specified, it shall nevertheless not be deemed to be in violation of this section if: (i) It has made a reasonable effort to secure such identification, and (ii) it maintains a list containing the names, addresses, and account numbers of those persons from whom it has been unable to secure such identification, and makes the names, addresses, and account numbers of those persons available to the Secretary as directed by him.

(2) The 45-day period provided for in paragraph (a)(1) of this section shall be extended where the person opening the account has applied for a taxpayer identification or social security number on Form SS-4 or SS-5, until such time as the person maintaining the account has had a reasonable opportunity to secure such number and furnish it to the broker or dealer.

(3) A taxpayer identification number for a deposit or share account required under paragraph (a)(1) of this section need not be secured in the following instances: (i) Accounts for public funds opened by agencies and instrumentalities of Federal, State, local, or foreign governments, (ii) accounts for aliens who are (*a*) ambassadors, ministers, career diplomatic or consular officers, or (*b*) naval, military or other attaches of foreign embassies, and legations, and for the members of their immediate families, (iii) accounts for aliens who are accredited representatives to international organizations which are entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. sec. 288), and for the members of their immediate families, (iv) aliens temporarily residing in the United States for a period not to exceed 180 days, (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university or any training program, supervised or conducted by any agency of the Federal Government, and (vi) unincorporated subordinate units of a tax exempt central organization which are covered by a group exemption letter.

(b) Every broker or dealer in securities shall, in addition, retain either the original or a microfilm or other copy or reproduction of each of the following:

(1) Each document granting signature or trading authority over each customer's account;

(2) Each record described in § 240.17a-3(a) (1), (2), (3), (5), (6), (7), (8), and (9) of Title 17, Code of Federal Regulations;

(3) A record of each remittance or transfer of funds, or of currency,

checks, other monetary instruments, investment securities, or credit, of more than $10,000 to a person, account, or place, outside the United States;

(4) A record of each receipt of currency, other monetary instruments, checks, or investment securities and of each transfer of funds or credit, of more than $10,000 received on any one occasion directly and not through a domestic financial institution, from any person, account or place outside the United States.

[37 FR 26518, Dec. 13, 1972, as amended at 38 FR 2176, Jan. 22, 1973]

### § 103.36 Nature of records and retention period.

(a) Wherever it is required that there be retained either the original or a microfilm or other copy or reproduction of a check, draft, monetary instrument, investment security, or other similar instrument, there shall be retained a copy of both front and back of each such instrument or document, except that no copy need be retained of the back of any instrument or document which is entirely blank or which contains only standardized printed information, a copy of which is on file.

(b) Records required by this subpart to be retained by financial institutions may be those made in the ordinary course of business by a financial institution. If no record is made in the ordinary course of business of any transaction with respect to which records are required to be retained by this subpart, then such a record shall be prepared in writing by the financial institution.

(c) Records which are required by § 103.34(b)(10) to be retained by banks shall be retained for a period of 2 years. All other records which are required by this subpart to be retained by financial institutions shall be retained for a period of 5 years. All such records shall be filed or stored in such a way as to be accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time expired since the record was made.

### § 103.37 Person outside the United States.

For the purposes of this subpart, a remittance or transfer of funds, or of currency, other monetary instruments, checks, investment securities, or credit to the domestic account of a person whose address is known by the person making the remittance or transfer, to be outside the United States, shall be deemed to be a remittance or transfer to a person outside the United States, except that, unless otherwise directed by the Secretary, this section shall not apply to a transaction on the books of a domestic financial institution involving the account of a customer of such institution whose address is within approximately 50 miles of the location of the institution, or who is known to be temporarily outside the United States.

## Subpart D—General Provisions

### § 103.41 Dollars as including foreign currency.

Wherever in this part an amount is stated in dollars, it shall be deemed to mean also the equivalent amount in any foreign currency.

### § 103.42 Photographic or other reproductions of Government obligations.

Nothing herein contained shall require or authorize the microfilming or other reproduction of

(a) Currency or other obligation or security of the United States as defined in 18 U.S.C. 8, or

(b) Any obligation or other security of any foreign government, the reproduction of which is prohibited by law.

### § 103.43 Availability of information.

The Secretary may make any information set forth in any report received pursuant to this part available to any other department or agency of the United States upon the request of the head of such department or agency, made in writing and stating the particular information desired, the criminal, tax or regulatory investigation or proceeding in connection with which the information is sought and the official need therefor. Any information made available under this section to other departments or agencies of the United States shall be received by them in confidence, and shall not be disclosed to any person except for official purposes relating to the investigation or proceeding in connection with which the information is sought.

[37 FR 2176, Jan. 22, 1973]

### § 103.44 Disclosure.

All reports required under this part and all records of such reports are specifically exempted from disclosure under section 552 of title 5, United States Code.

### § 103.45 Exceptions, exemptions, and reports.

(a) The Secretary, in his sole discretion, may by written order or authorization make exceptions to or grant exemptions from the requirements of this part. Such exceptions or exemptions may be conditional or unconditional, may apply to particular persons or to classes of persons, and may apply to particular transactions or classes of transactions. They shall, however, be applicable only as expressly stated in the order of authorization, and they shall be revocable in the sole discretion of the Secretary.

(b) The Secretary shall have authority to further define all terms used herein.

[38 FR 2176, Jan. 22, 1973]

### § 103.46 Enforcement.

(a) Responsibility for assuring compliance with the requirements of this part is delegated as follows:

(1) To the Comptroller of the Currency, with respect to national banks and banks in the District of Columbia;

(2) To the Board of Governors of the Federal Reserve System, with respect to State bank members of the Federal Reserve System;

(3) To the Federal Home Loan Bank Board, with respect to insured building and loan associations, insured savings and loan associations, and insured institutions as defined in section 401 of the National Housing Act;

(4) To the Administrator of the National Credit Union Administration, with respect to Federal credit unions;

(5) To the Federal Deposit Insurance Corporation, with respect to all other banks except agents of foreign banks which agents are not supervised by State or Federal bank supervisory authorities;

(6) To the Securities and Exchange Commission, with respect to brokers and dealers in securities;

(7) To the Commissioner of Customs with respect to §§ 103.23 and 103.48;

(8) To the Commissioner of Internal Revenue except as otherwise specified in this section.

(b) Overall responsibility for coordinating the procedures and efforts of the agencies listed herein and assuring compliance with this part is delegated to the Assistant Secretary (Enforcement and Operations). Periodic reports shall be made by each such agency to the Assistant Secretary (Enforcement and Operations), with copies to the General Counsel of the Treasury and to the Commissioner of Internal Revenue.

(Sec. 21 of the Federal Deposit Insurance Act, 84 Stat. 1114, 12 U.S.C. 1829b; 84 Stat. 1116, 12 U.S.C. 1951-1959; and the Currency and Foreign Transactions Reporting Act, 84 Stat. 1118, 31 U.S.C. 1051-1122)

[37 FR 6912, Apr. 5, 1972, as amended at 42 FR 33033, June 29, 1977; 44 FR 13478, Mar. 12, 1979]

### § 103.47 Civil penalty.

(a) For any willful violation of any requirement of this part, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer or employee thereof who willfully participates in the violation, a civil penalty not exceeding $1,000.

(b) For any failure to file a report required under § 103.23 or for filing such a report containing any material omission or misstatement, the Secretary may assess a civil penalty up to the amount of the currency or monetary instruments transported, mailed or shipped, less any amount forfeited under § 103.48.

### § 103.48 Forfeiture of currency or monetary instruments.

Any currency or other monetary instruments which are in the process of any transportation with respect to which a report is required under § 103.23 are subject to seizure and forfeiture to the United States if such report has not been filed as required in § 103.25, or contains material omissions or misstatements. The Secretary may, in his sole discretion, remit or mitigate any such forfeiture in whole or in part upon such terms and conditions as he deems reasonable.

### § 103.49 Criminal penalty.

(a) Any person who willfully violates any provision of this part may, upon conviction thereof, be fined not more than $1,000 or be imprisoned not more than 1 year, or both. Such person may in addition, if the violation is of any provision authorized by title I of Pub. L. 91-508 and if the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than 1 year, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

(b) Any person who willfully violates any provision of title II of Pub. L. 91-508, or of this part authorized thereby, where the violation is either

(1) Committed in furtherance of the commission of any other violation of Federal law, or

(2) Committed as part of a pattern of illegal activity involving transactions exceeding $100,000 in any 12-month period, may, upon conviction thereof, be fined not more than $500,000 or be imprisoned not more than 5 years, or both.

(c) Any person who knowingly makes any false, fictitious or fraudulent statement or representation in any report required by this part may, upon conviction thereof, be fined not more than $10,000 or be imprisoned not more than 5 years, or both.

### § 103.50 Enforcement authority with respect to transportation of currency or monetary instruments.

(a) If the Secretary has reason to believe that currency or monetary instruments are in the process of transportation and with respect to which a report required under § 103.23 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles. Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law or regulation.

### § 103.51 Access to records.

Except as provided in §§ 103.34(a)(1) and 103.35(a)(1), and except for the purpose of assuring compliance with the recordkeeping and reporting requirements of this part, this part does not authorize the Secretary or any other person to inspect or review the records required to be maintained by Subpart C of this part. Other inspection, review or access to such records is governed by other applicable law.

[38 FR 2176, Jan. 22, 1973]

## APPENDIX—INTERPRETATIONS AND EXEMPTIONS

The following interpretations and exemptions were compiled in response to requests by persons subject to the regulations of Part 103. Additional interpretations and exemptions will appear from time to time as the occasion warrants. Identifying details and confidential information have been deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from members of the public.

Section 103.11 *Exemption from.* 1. The definition of a bank as appears in § 103.11 (a)(7) was not intended to include a company which is wholly engaged in financing inventories and retail installment sales of automobile dealers. Such a company requested and was granted an exemption from the recordkeeping and reporting requirements of Part 103, Title 31, Code of Federal Regulations. However, if said company is a "financial institution" within the meaning of § 103.11 (other than as a "bank") it would, of course, have to comply with those provisions of this part relating to financial institutions other than banks.

Section 103.23 *Interpretations.* 1. Unless a transaction in foreign currency for clients who are nonresidents of the United States and performed through brokers outside the United States involves the physical transportation, mailing, or shipment of currency, bearer investment securities or negotiable instruments in bearer form into or out of the United States in amounts exceeding $5,000 on any one occasion, there is no duty to report the transfer. A transfer of funds by means of bank check, bank draft, or wire transfer need not be reported.

2. A bank is not required to prepare Form 4790 if the bank receives such items over the counter from a person who may have transported them into the United States or if the bank delivers such items over the counter to a person who may transport them out of the United States. However, if a bank knows that such items have been transported into the country, it must file a report on Form 4790 if a complete and truthful report has not been filed by the customer.

3. Section 103.23(c) provides that a bank is not required to report currency or other monetary instruments mailed or shipped through the postal service or by common carrier. When a trust company is acting as a corporate executor or corporate trustee, no report need be filed with respect to currency or bearer monetary instruments mailed or shipped through the postal service.

4. In the case where a trust company acts as custodian for individual executors and trustees who maintain custody accounts for those estates and trusts where they are named fiduciary, it will be necessary to file a Form 4790, Report of International Transportation of Currency or Monetary Instruments, under the circumstances described in § 103.23(a).

5. A private courier service does not qualify as a "common carrier" under the regulations.

Section 103.23 *Exemptions from.* 1. A bank whose employees physically transport currency across the Canadian border on a weekly basis for deposit with a Canadian bank which is only a few hundred yards away requested an exemption from the requirements of § 103.23. Due to the special circumstances, the Department granted the request provided that an accurate record of such transfers is maintained by the bank.

2. A bank in Maine, which for a period of more than 20 years, has used its personnel to physically transport sums of currency and checks in excess of $5,000 to and from a bank in a contiguous Canadian town several times a month, requested and was granted an exemption from the reporting requirements of § 103.23 due to the special circumstances involved. The Department, however, does require the bank to maintain an accurate account of such transfers.

3. An exemption is granted to any merchant shipping company from the requirement to report the transportation into or out of the United States of currency or bearer instruments in amounts in excess of $5,000 with respect to currency or bearer instruments placed on board ship by the owner or operator in order to provide for reasonable shipping needs. Records of such moneys placed on board are to be maintained by the shipping companies.

4. A company that transports sealed packages containing money and valuables under written bilateral contracts for banks, brokerage houses, and security dealers requested an exemption from the requirements of this section. Under the provisions of § 103.23(c)(7), such companies are exempt from reporting the transportation of currency or monetary instruments overland between established offices of banks or brokers or dealers in securities and foreign banks. The company in question is further granted an exemption from reporting overland shipments between domestic banks, brokers, or security dealers and foreign persons. However, all firms engaged in international carriage of valuables by air must continue to file with the Bureau of Customs reports of international air shipments.

SECTION 103.24 *Interpretation.* Treasury announced on March 20, 1978, that an officer or employee of a domestic corporation, which has securities listed on national securities exchanges or which has assets exceeding $1 million and 500 or more shareholders of record, need not report that he has signature authority over a foreign financial account of the corporation, provided he has no personal financial interest in the account and has been advised in writing by the chief financial officer of the corporation that the corporation has filed a current report which includes that account.

Treasury subsequently received a request for an interpretation regarding the ruling's applicability to officers and employees of domestic subsidiaries of such corporations.

Since the March 20 notice permits a parent corporation to file a consolidated report of foreign financial accounts on behalf of itself and any other entity in which it owns directly or indirectly more than a 50 percent interest, we see no reason to discriminate between employees of the parent and those of its subsidiaries.

Accordingly, an officer or employee of a domestic subsidiary of a domestic corporation which has securities listed on national securities exchanges or which has assets exceeding $1 million and 500 or more shareholders of record, need not report that he has signature authority over a foreign financial account of the subsidiary, if he has no personal financial interest in the account and has been advised in writing by the chief financial officer of the parent corporation that the subsidiary corporation has filed a current report which includes that account.

Section 103.33(a) *Interpretation.* 1. This regulation requires the keeping of records, the majority of which are already kept by financial institutions. The typical loan application form asks the applicant to state the purpose of the loan, so it would seem normal in the case of each extension of credit in an amount in excess of $5,000 for the record to contain a reference to the nature or the purpose of the loan. However, if it is a passbook loan, for example, the entry "passbook loan" would suffice.

Section 103.34(a) *Interpretations.* 1. Any citizen residing or doing business in the United States and any citizen of the United States who opens an account with a financial institution after June 30, 1972, must provide that institution with his taxpayer identification number at the time the account is opened. For individuals, the taxpayer identification number is his social security number; for corporations, partnerships, and other entities, it is the IRS employer identification number.

Banks, savings and loan associations, building and loan associations, savings banks, credit unions, and brokers and dealers in securities are included in this requirement. If an account is opened in more than one individual's name, the financial institution is required to secure and maintain the social security number of at least one individual having a financial interest in that account.

If the customer does not have a taxpayer identification number or has lost his card and is unaware of his number, the account may be opened provided the customer (or if under 18 years of age, his guardian) authorizes the Social Security Administration to furnish his social security number to both the customer and the financial institution, or the customer, regardless of age, authorizes the Internal Revenue Service to furnish his employer identification number to both the customer and the financial institution.

With respect to accounts opened for trusts, charitable organizations, clubs, and similar entities the financial institution should secure the employer identification number of the entity. An employer identification number must be obtained for this purpose even though an organization might not otherwise require one. See instructions published July 6, 1972 (37 FR 13279).

2. This requirement of a taxpayer identification number does not apply to aliens who are ambassadors, ministers, career diplomatic or consular officers, or to naval, military and other attachés of foreign embassies and legations, and the members of their immediate families, nor to aliens who are accredited representatives to international organizations entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), and the members of their immediate families.

3. In regard to determining the proper identifying number to be furnished by accounts opened in more than one name, the bank should follow the regulations and rulings issued by the Internal Revenue Service under section 6109 of the Internal Revenue Code. These rules are outlined on the back of IRS Form 3435. However, the bank should not use Form 3435 to apply for a taxpayer identification number for a new account, but should instead use Form SS-4 or SS-5.

4. The bankruptcy estate of an individual or partnership is considered as a separate entity from the individual or partnership. However, the Treasury Department does not regard the estate of a corporation in bankruptcy as an entity separate from the corporation. Accordingly, the trustee of a corporation in bankruptcy should use the identification number of the corporation. Upon completion of the IRS Form SS-4 with an appropriate authorization to furnish the employer identification number to the institution, a trustee will be permitted to make deposits. He need not wait until the employer identification number is obtained.

5. All accounts that are primarily savings or checking accounts, with the exception of mortgage escrow accounts, are deposit accounts and are subject to the requirements of this section.

6. Where a person purchases a money order directly from the bank or through an agent of the bank and the bank maintains only a consolidated account with no separate record by customer, no deposit account has been opened by the customer and only those recordkeeping requirements normally applicable to cashier's checks would apply.

7. Where a person reopens a checking account after June 30, 1972, the bank is required to secure the social security number just as with a new account, and the same would apply to the automatic extension of a certificate of deposit.

8. [Reserved]

9. A credit card program operated by a bank does not involve a deposit account and is not, therefore, subject to the requirements of this section.

10. Section 103.34(a) exempts nonresident aliens not doing business in the United States from the requirement to furnish the bank with a taxpayer identification number. If an alien asserts that he is neither residing

nor doing business in the United States a bank therefor may open the account without obtaining a taxpayer identification number, provided that it secures a statement from the person to that effect and provided the bank is unaware of any facts inconsistent with that statement. Normal banking practices for ascertaining identity and location of customers should be followed. All nonresident aliens in the United States should have one of the following U.S. Immigration and Naturalization Service forms:

1. Form I-151 (Alien Registration Receipt Card).
2. Form I-185 (Nonresident Alien Canadian Border Crossing Card).
3. Form I-186 (Nonresident Alien Mexican Border Crossing Card).
4. Form I-94 (Arrival-Departure Record).
5. Form I-95A (Alien Crewman's Landing Permit).
6. Form I-184 (Alien Crewman's Landing Permit and Identification Card).

The bank should maintain a record of the applicant's country of citizenship and the number assigned him on his INS form or other official document issued by the applicant's government.

11. In regard to a business firm opening an account in the name of employees who are foreign nationals not residing in the United States, the bank may open the account for them without securing a taxpayer identification number pursuant to this section provided that the bank is satisfied that the persons are nonresident aliens not doing business in the United States. The bank should verify the identity and whereabouts of such persons and require the business firm to supply for each such account a statement to the effect that the employee is a nonresident alien not doing business in the United States.

12. It is acknowledged that the "Old Order Amish" people do not accept social security benefits or pay self-employment tax. In 1965, the Internal Revenue Code was amended to provide an exemption from self-employment tax if a person can shown that he is a member of a recognized religious sect which follows the practice of making reasonable provisions for its dependent members. While the Amish people are opposed to and exempted from the social security program, they do pay their Federal taxes. A bank should explain to its Amish customers that the number required to open any account is merely a taxpayer identification number and in no way obligates such person to the social security system. However, if a depositor still objects on religious grounds to applying for a social security number, Form SS-4, Application for an Employer Identification Number, can be used instead.

13. If a new business has applied for an employer identification number, but has not yet received it when it seeks to open a bank account, the bank may open the account if it secures a completed Form SS-4 in accordance with the instructions issued by Treasury. The completed Form should not be sent to IRS but simply retained as evidence that an application for a number is pending. Since in the above instance the bank will not automatically receive the number, it must follow up with the customer to insure that the number is furnished within a reasonable time. Generally speaking, the Internal Revenue Service furnishes an employer identification number to an applicant within 45 days.

Section 103.34(a) *Exemptions from.* 1. An exemption from the requirements of this subsection is granted with respect to all accounts opened as part of a school savings program for school savers up to 18 years of age, provided that the amount of interest earned on such accounts is $10 or less. Children over 18 years of age may apply for a social security number without parental authorization and payments of interest aggregating $10 or more are required by section 6049, Internal Revenue Code of 1954, to be reported on Form 1099, together with the depositor's social security number. Banks having a school savings program should set up appropriate procedures to obtain numbers for account held by persons aged 18 years or older and for all accounts earning interest of $10 or more annually. 2. An exemption from the requirements of this subsection is granted with respect to Christmas Club accounts, provided the annual interest is not anticipated to exceed $10.

Section 103.34(b) *Interpretations.* 1. If there is no check or draft corresponding to a preauthorized paper entry, it will be sufficient to maintain the customer's authorization to charge his account and the memorandum list of entries for a period of 5 years.

2. Insurance companies commonly issue drafts in settlement of claims or for other purposes which are payable through a particular bank, but which are drawn on the company itself and not on a deposit account. However, drafts which are issued by insurance companies are treated as checks throughout the financial system, despite the fact that they are not drawn on a deposit account, and are, therefore, subject to the requirements of § 103.34(b) (3). If these drafts meet the volume and purpose requirements of this section, no copy need be retained. If they do not meet these standards, it will be necessary for the bank to retain a copy of the draft as required by this section and to retain the records required by § 103.34(b) (10) for a period of 2 years.

3. Clean drafts, including "cash item drafts", are drawn "payable through" or

"payable at" a particular bank. The bank receives them and presents them to its customer who reviews them and pays for those it accepts. The majority of such items should be eligible for exemption under § 103.34(b) (3), those which are not eligible should be microfilmed or copied before they are released to the customer.

4. Section 103.34(b) (10) does not require a receiving bank to copy or be able to produce an item drawn on another bank. Furthermore, a bank need not be able to supply a description of a deposited check if it can trace a check through its domestic processing system.

Section 103.36 *Interpretation.* 1. A bank must retain for a period of 5 years checks drawn on itself. However, the proof and entry run tapes, which allow a bank to reconstruct an account, need only be retained for a period of 2 years.

Section 103.37 *Interpretation.* 1. The term "temporarily" used in this section should be interpreted as a vacation or business assignment expected to last less than 6 months.

Section 103.42 *Interpretation.* 1. This section provides that nothing contained herein shall require or authorize the microfilming or other reproduction of currency or obligation or security of the United States as defined in 18 U.S.C. 8 or any obligation or security of any foreign government. However, government checks may be microfilmed, but not copied, for the purpose of tracing or identifying a transaction.

Section 103.45 *Exemptions.* 1. A bank, whose employees physically transport currency across the Canadian border on a weekly basis for deposit with a Canadian bank which is only a few hundred yards away, requested an exemption from the requirements of § 103.23. Due to the special circumstances, the Department granted the request provided that an accurate record of such transfers is maintained by the bank.

2. A bank in Maine, which for a period of more than 20 years has used its personnel to physically transport sums of currency and checks in excess of $5,000 to and from a bank in a contiguous Canadian town several times a month, requested and was granted an exemption from the reporting requirements of § 103.23 due to the special circumstances involved. The Department, however, does require the bank to maintain an accurate record of such transfers.

3. An exemption is granted to any merchant shipping company from the requirement to report the transportation into or out of the United States of currency or bearer instruments in amounts in excess of $5,000 with respect to currency or bearer instruments placed on board ship by the owner or operator in order to provide for reasonable shipping needs. Records of such monies placed on board are to be maintained by the shipping companies.

4. A company wholly engaged in financing inventories and retail installment sales of automobile dealers which came within the definition of a "bank" in § 103.11(a) (7) requested and was granted an exemption from the recordkeeping and reporting requirements of Part 103, Title 31, Code of Federal Regulations. However, if said company is a "financial institution" within the meaning of § 103.11 (other than as a "bank") it would, of course, have to comply with those provisions of this part relating to financial institutions other than banks.

5. An exemption from the requirements of § 103.34(a) is granted with respect to all accounts opened as part of a school savings program for school savers up to 18 years of age, provided that the amount of interest earned on such accounts is $10 or less. Children over 18 years of age may apply for a social security number without parental authorization and payments of interest aggregating $10 or more are required by section 6049, Internal Revenue Code of 1954, to be reported on Form 1099, together with the depositor's social security number. Banks having a school savings program should set up appropriate procedures to obtain numbers for accounts held by persons aged 18 years or older and for all accounts earning interest of $10 or more annually.

6. An exemption from the provisions of Part 103, Title 31, Code of Federal Regulations, is granted to those persons who are registered with the Securities and Exchange Commission as broker-dealers solely in order to offer and sell variable annuity contracts issued by life insurance companies. However, if a person so registered at any time offers and sells other types of securities in addition to variable annuity contracts, this exemption does not apply to any part of his business. This exemption will in no way affect recordkeeping regulations or other requirements promulgated under the Securities and Exchange Act of 1934, as amended.

7. An exemption from the requirements of § 103.34(a) is granted with respect to Christmas Club accounts, provided the annual interest is not anticipated to exceed $10.

[37 FR 24896, Nov. 23, 1972, as amended at 43 FR 27826, June 27, 1978]

## PART 120—PROCLAMATIONS AND EXECUTIVE ORDERS CONCERNING BANKING

Sec.
120.1 Proclamation 2039 of March 6, 1933, declaring a bank holiday.
120.2 Proclamation 2040 of March 9, 1933, continuing in force the bank holiday.

Sec.
120.3 Executive Order 6073 of March 10, 1933, concerning the operation of banks.
120.4 Executive Order 6080 of March 18, 1933, concerning the appointment of conservators for State banks, members of the Federal Reserve System.
120.5 Proclamation 2070 of December 30, 1933, concerning banking institutions not members of the Federal Reserve System.
120.6 Executive Order 6559 of January 15, 1934, amending provisions concerning the operation of banks.
120.7 Proclamation 2725 of April 7, 1947, excluding Federal Reserve banks from scope of §§ 120.1 -120.3.

### § 120.1 Proclamation 2039 of March 6, 1933, declaring a bank holiday.

I, Franklin D. Roosevelt, President of the United States of America, in view of * * * national emergency and by virtue of the authority vested in me by said act (October 6, 1917, 40 Stat. 411) and in order to prevent the export, hoarding, or earmarking of gold or silver coin or bullion or currency, do hereby proclaim, order, direct and declare that from Monday, the sixth day of March, to Thursday, the ninth day of March, nineteen hundred and thirty-three, both dates inclusive, there shall be maintained and observed by all banking institutions and all branches thereof located in the United States of America, including the territories and insular possessions, a bank holiday, and that during said period all banking transactions shall be suspended. During such holiday, excepting as hereinafter provided, no such banking institution or branch shall pay out, export, earmark, or permit the withdrawal or transfer in any manner or by any device whatsoever, of any gold or silver coin or bullion or currency or take any other action which might facilitate the hoarding thereof nor shall any such banking institution or branch pay out deposits, make loans or discounts, deal in foreign exchange, transfer credits from the United States to any place abroad, or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve banks or invested in obligations of the United States.

As used in this section the term "banking institutions" shall include all Federal Reserve banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or persons, engaged in the business of receiving deposits, making loans, discounting business papers, or transacting any other form of banking business.

(Sec. 5(b), 40 Stat. 415, as amended, sec. 1, 48 Stat. 1; 12 U.S.C. 95a, 95b)

[Proc. 2039, Mar. 6, 1933]

NOTE: § 120.7 excludes from the scope of § 120.1 member banks of the Federal Reserve System.

### § 120.2 Proclamation 2040 of March 9, 1933, continuing in force the bank holiday.

I, Franklin D. Roosevelt, President of the United States of America, in view of * * * continuing national emergency and by virtue of the authority vested in me by section 5(b) of the act of October 6, 1917 (40 Stat. 415; 12 U.S.C. 95a), as amended by the Act of March 9, 1933 (48 Stat. 1; 12 U.S.C.), do hereby proclaim, order, direct and declare that all the terms and provisions of the Proclamation of March 6, 1933 (§ 120.1), and the regulations and orders issued thereunder are hereby continued in full force and effect until further proclamation by the President.

(Sec. 5(b), 40 Stat. 415, as amended, sec. 13, 48 Stat. 343; 12 U.S.C. 95a, 213; Proc. 2039, Mar. 6, 1933)

[Proc. 2040, Mar. 9, 1933]

NOTE: § 120.7 excludes from the scope of § 120.2 member banks of the Federal Reserve System.

### § 120.3 Executive Order 6073 of March 10, 1933, concerning the operation of banks.

The Secretary of the Treasury is authorized and empowered under such regulations as he may prescribe to permit any member bank of the Federal Reserve System and any other banking institution organized under the laws of the United States, to perform any or all of their usual banking functions, except as otherwise prohibited.

The appropriate authority having immediate supervision of banking institutions in each State or any place subject to the jurisdiction of the United States is authorized and empowered under such regulations as such authority may prescribe to permit any banking institution in such State or place, other than banking institutions covered by the foregoing paragraph, to perform any or all of their usual banking functions, except as otherwise prohibited.

All banks which are members of the Federal Reserve System, desiring to reopen for the performance of all usual and normal banking functions, except as otherwise prohibited, shall apply for a license therefor to the Secretary of the Treasury. Such application shall be filed immediately through the Federal Reserve banks. The Federal Reserve bank shall then transmit such applications to the Secretary of the Treasury. Licenses will be issued by the Federal Reserve bank upon approval of the Secretary of the Treasury. The Federal Reserve banks are hereby designated as agents of the Secretary of the Treasury for the receiving of application and the issuance of licenses in his behalf and upon his instructions.

Until further order, no individual, partnership, association, or corporation, including any banking institution, shall export or otherwise remove or permit to be withdrawn from the United States or any place subject to the jurisdiction thereof any gold coin, gold bullion, or gold certificates, except in accordance with regulations prescribed by or under license issued by the Secretary of the Treasury.

No permission to any banking institution to perform any banking functions shall authorize such institution to pay out any gold coin, gold bullion or gold certificates except as authorized by the Secretary of the Treasury, nor to allow withdrawal of any currency for hoarding.

(Sec. 5(b), 40 Stat. 415, as amended, secs. 4, 13, 48 Stat. 2, 343; 12 U.S.C. 95a, 213; Proc. 2039, Mar. 6, 1933; Proc. 2040, Mar. 9, 1933)

[EO 6073, Mar. 10, 1933, as amended by sec. 1, EO 6559, Jan. 15, 1934]

NOTE: § 120.7 excludes from the scope of § 120.3 member banks of the Federal Reserve System.

### § 120.4 Executive Order 6080 of March 18, 1933, concerning the appointment of conservators for State banks, members of the Federal Reserve System.

Whenever the appropriate authority having immediate supervision of any banking institution located in any State or place subject to the jurisdiction of the United States, which is a member of the Federal Reserve System and which has not been licensed by the Secretary of the Treasury to resume its usual banking functions, shall deem it necessary or advisable in order to conserve the assets of such banking institution for the benefit of the depositors or other creditors, such authority may, in accordance with the provisions of the applicable laws of such State or place, appoint such appropriate official as may be authorized under such laws to conserve the assets of such banking institution pending further disposition of its business as provided by such laws.

This order shall not authorize any such member bank to reopen for the performance of usual and normal functions until it shall have received a license from the Secretary of the Treasury as provided in Executive Order of March 10, 1933 (§ 120.3).

(Sec. 5(b), 40 Stat. 415, as amended, secs. 4, 13, 48 Stat. 2, 343; 12 U.S.C. 95a, 95, 213)

[EO 6080, Mar. 18, 1933]

### § 120.5 Proclamation 2070 of December 30, 1933, concerning banking institutions not members of the Federal Reserve System.

I, Franklin D. Roosevelt, President of the United States, in order to assure that the banking authority in each State and in any place subject to the jurisdiction of the United States shall have and exercise the sole responsibility for and control over, banking institutions which are not members of the Federal Reserve System, do hereby proclaim, order, direct, and declare that the proclamations of March 6, 1933 (§ 120.1), and March 9, 1933 (§ 120.2), and the Executive order of March 10, 1933 (§ 120.3), and all orders and regulations pursuant thereto, are amended, effective the first day of January, nineteen hundred and thirty-four, to exclude from their scope banking institutions which are not members of the Federal Reserve System. *Provided, however,* That no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, nor allow the withdrawal of any currency for hoarding.

(Sec. 5(b), 40 Stat. 415, as amended, secs. 4, 13, 48 Stat. 2, 343; 12 U.S.C. 95a, 95, 213; Proc. 2039, Mar. 6, 1933; Proc. 2040, Mar. 9, 1933; E.O. 6073, Mar. 10, 1933)

[Proc. 2070, Dec. 30, 1933, as amended by sec. 2, EO 6559, Jan. 15, 1934]

### § 120.6 Executive Order 6559 of January 15, 1934, amending provisions concerning the operation of banks.

(a) *Preamble.* I, Franklin D. Roosevelt, President of the United States of America, do hereby issue the following Executive order:

(b) *Amendment of Executive Order 6073 of March 10, 1933, and licenses issued thereunder.* The last two paragraphs of the Executive order of March 10, 1933 (§ 120.3), concerning the operation of banks, are amended, effective from the date of this order (this section), by striking out the following:

> nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.
>
> Every Federal Reserve bank is authorized and instructed to keep itself currently informed as to transactions in foreign exchange entered into or consummated within its district and shall report to the Secretary of the Treasury all transactions in foreign exchange which are prohibited.

The Secretary of the Treasury is authorized to amend the licenses heretofore issued with his approval by the Federal Reserve banks under the Executive order of March 10, 1933 (§ 120.3), by issuing through the Federal Reserve banks amendatory licenses removing the restriction upon transactions in foreign exchange contained in the licenses heretofore issued.

(c) *Amendment of Proclamation 2070 of December 30, 1933.* The Proclamation of December 30, 1933 (§ 120.5), relating to the licensing of banking institutions which are not members of the Federal Reserve System, is amended, effective from the date of this order, by striking out the following:

> nor to engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for the fulfillment of contracts entered into prior to March 6, 1933.

(d) *Matters not affected by paragraphs (b) and (c) of this section.* The amendment of such Executive order of March 10, 1933 (§ 120.3), or of any licenses issued thereunder, and the amendment of such proclamation of December 30, 1933 (§ 120.5), shall not affect any act done, or any order, decision, or finding made, or relieve any person from the consequences of any unauthorized act committed prior to the date of this Executive order; nor shall the amendment of the Executive order of March 10, 1933, or the proclamation of December 30, 1933, relieve any person from the obligation of complying with the terms of the Executive order of January 15, 1934 (Part 127 of this chapter), relating to the export of coin and currency and transactions in foreign exchange, or the regulations or licenses issued thereunder, or of any other provision of law affecting transactions in foreign exchange.

(Sec. 5(b), 40 Stat. 415, as amended, secs. 4, 13, 48 Stat. 2, 343; 12 U.S.C. 95, 95a, 213, EO 6073, Mar. 10, 1933; Proc. 2070, Dec. 30, 1933; EO 6560, Jan. 15, 1934)

[EO 6559, Jan. 15, 1934]

### § 120.7 Proclamation 2725 of April 7, 1947, excluding Federal Reserve banks from scope of §§ 120.1–120.3.

I, Harry S. Truman, President of the United States of America, acting under and by virtue of the authority vested in me by section 5(b) of the Trading With the Enemy Act of October 6, 1917, 40 Stat. 415, as amended, and section 4 of the act of March 9, 1933, 48 Stat. 2, and by virtue of all other authority vested in me, do hereby, in the interest of the internal management of the Government, proclaim, order, direct, and declare that the said proclamations of March 6 and March 9, 1933 (§§ 120.1, 120.2), and Executive order of March 10, 1933, as amended (§ 120.3), are further amended to exclude from their scope banking institutions which are members of the Federal Reserve System: *Provided, however,* That no banking institution shall pay out any gold coin, gold bullion, or gold certificates, except as authorized by the Secretary of the Treasury, or allow the withdrawal of any currency for hoarding.

(Sec. 5(b) 40 Stat. 415, as amended, sec. 4, 48 Stat. 2; 12 U.S.C. 95a, 95)

[Proc. 2725, April 7, 1947, 12 FR 2343, Apr. 10, 1947]

## PART 121—EMERGENCY BANKING REGULATIONS

Sec.
121.1 Exchange of currency by banks.
121.2 Access to safety deposit boxes.
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121.30 Limited functions by banks controlled by conservators or State officials.
121.31 Functions of non-licensed member banks as trustee, executor, etc.
121.32 Withdrawal of secured deposits from non-licensed State member banks.

AUTHORITY: Sec. 5(b), 40 Stat. 415, as amended, secs. 1, 2, 3, 4, 13, 48 Stat. 1, 2, 343; 12 U.S.C. 95, 95a, 95b, 213, 248 (n), 50 U.S.C. App. 5, Proc. 2039, Mar. 6, 1933, Proc. 2040, Mar. 9, 1933, unless otherwise noted.

### § 121.1 Exchange of currency by banks.

All Federal Reserve banks and all other banking institutions are authorized to make change by the exchange of currency and/or coin of various denominations for an exactly equal amount of currency and/or coin of other denominations, but no gold or gold certificates shall be paid out in making change.

[Emergency Banking Reg. 1, Mar. 6, 1933]

### § 121.2 Access to safety deposit boxes.

All banking institutions may allow their customers free access to the safety deposit boxes and safes rented to such customers.

[Emergency Banking Reg. 2, Mar. 6, 1933]

### § 121.3 Return of items received after closing.

All banking institutions may upon request return intact and without restriction all cash, checks, and other items delivered for deposit or collection which were received after the last closing of business hours and have not been entered on the books of such banking institution.

[Emergency Banking Reg. 3, Mar. 6, 1933]

### § 121.4 Cashing of checks drawn on Treasurer of United States.

All banking institutions may continue, in accordance with usual practice, to cash checks drawn on the Treasurer of the United States: *Provided*, That no gold or gold certificates shall be paid out.

[Emergency Banking Reg. 4, Mar. 6, 1933]

### § 121.5 Settlement of obligations payable at banks.

Any banking institution may accept payments in cash or any other form acceptable to it on account or in settlement of obligations payable at or to such institution.

[Emergency Banking Reg. 5, Mar. 6, 1933]

### § 121.6 Transactions relating to shipment of food.

Any banking institution may handle and collect drafts or other documents in connection with the shipment, transportation or delivery of food or feed products, may pay out or permit the withdrawal of such amounts of currency as shall be necessary in the judgment of such banking institution in connection with such shipment, transportation or delivery of food or feed products, and may perform such other banking functions as may be essential to the shipment, transportation or delivery of food or feed products: *Provided, however,* That no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

[Emergency Banking Reg. 6, Mar. 7, 1933]

CROSS REFERENCE: For modification of § 121.6, see § 121.28.

### § 121.7 Deposits received pursuant to agreement or legislative authority; new deposits; special accounts opened by Federal Reserve banks.

Deposits heretofore received by any banking institution pursuant to agreement or legislative authority providing for segregation and for repayment without restriction may be paid on demand. Any banking institution which was lawfully engaged in the business of receiving deposits prior to March 6, 1933, may create special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve banks or invested in obligations of the United States. Federal Reserve banks may open special accounts on their books for their member banks and temporarily for nonmember banks and may receive in such special accounts the proceeds of new deposits received by such banking institutions. In making deposits with the Federal Reserve bank pursuant to this section, the depositing bank shall in the case of each deposit indicate to the Federal Reserve bank by symbol or otherwise that the funds so deposit represent new deposits made under this section. Upon receipt of such deposits such Federal Reserve bank shall credit the same in the special account of the depositing bank herein provided for and shall hold the same solely for repayment to such bank. Federal Reserve banks shall permit the withdrawal of any part or all of such new deposits by the depositing bank without restriction provided that the depositing bank shall in such order or request for withdrawal indicate to the Federal Reserve bank by symbol or otherwise that such withdrawal is to be made from such special account: *Provided, however,* That no banking institution shall pay out or permit the withdrawal of any gold or gold certificates.

[Emergency Banking Reg. 7, Mar. 6, 1933]

CROSS REFERENCE: For redeposit of deposits received pursuant to agreement or legislative authority, see § 121.15.

### § 121.8 Settlement for checks charged to drawers' accounts on or before March 4, 1933.

Where settlement for checks charged by drawee institutions to the drawers' accounts on its books on or before March 4, 1933, is incomplete, settlement may be completed where such settlement does not involve the payment of money or currency.

[Emergency Banking Reg. 8, Mar. 7, 1933]

### § 121.9 Delivery of documents and securities.

Any banking institution may deliver to the person entitled thereto properly identified documents and securities held by such institution for safekeeping.

[Emergency Banking Reg. 9, Mar. 7, 1933]

### § 121.10 Exercise of banking functions necessary to meet needs for food, medicine, and other necessities of life.

(a) Any national or State banking institution may exercise its usual banking functions to such extent as its situation shall permit and as shall be absolutely necessary to meet the needs of its community for food, medicine, other necessities of life, for the relief of distress, for the payment of usual salaries and wages for necessary current expenditures for the purpose of maintaining employment, and for other similar essential purposes. Banking institutions may carry out such transactions as may be necessary to aid banking institutions in other communities to meet the necessities set forth above: *Provided, however,* That (1) every precaution shall be taken to prevent hoarding or the unnecessary withdrawal of currency; (2) no State banking institution shall engage in any transaction under this section which is in violation of State or Federal law or of any regulation issued thereunder; (3) no national banking association shall engage in any transaction under this section which is in violation of any Federal law or of any order or regulation issued by the Comptroller of the Currency; and (4) no gold or gold certificates shall be paid out. Each banking institution and its directors and officers will be held strictly accountable for faithful compliance with the spirit and purpose as well as the letter of this section.

(b) Federal Reserve banks may carry on such functions as may be necessary to facilitate transactions authorized by this section.

(c) In order to enable member banks of the Federal Reserve System to meet the needs of their respective communities to the extent authorized by this section Federal Reserve banks may make advances to such member banks under the conditions set forth in section 10(b) of the Federal Reserve Act, as amended by the act of March 9, 1933, and in accordance with authority granted by the Federal Reserve Board.

(d) In addition, in order to enable individuals, partnerships and corporations to meet their immediate pay-roll requirements, Federal Reserve banks may make temporary advances to such individuals, partnerships and corporations on their promissory notes secured by direct obligations of the United States in accordance with authority granted by the Federal Reserve Board.

[Emergency Banking Reg. 10, Mar. 7, 1933, as amended Mar. 10, 1933]

CROSS REFERENCE: For modification of § 121.10, see § 121.28.

### § 121.11 Advances to bank branches in foreign countries.

Any bank having a branch in a foreign country may deposit collateral in the United States to secure advances to such branch in a foreign country, provided such transaction does not involve any transfer of credit from the United States to a foreign country and any bank having a branch in an insular possession of the United States may deposit United States Government securities or other collateral for a similar purpose when under the President's proclamation advances of local currency in the insular possession may lawfully be made.

[Emergency Banking Reg. 11, Mar. 7, 1933]

### § 121.12 Permission to issue certificates against sound assets of banks.

Clearing house associations and other associations organized to provide an adequately secured medium of temporary exchange, are hereby permitted to issue certificates against sound assets of banking institutions, such certificate to be deliverable by each institution to its creditors and depositors on a pro rata basis: *Provided, however,* That no such certificates shall be issued before Friday, March 10, 1933, without the consent of the Secretary of the Treasury addressed to the clearing house or other association proposing to issue such certificates: *And further provided,* That this permission may be revoked in the event that a national plan to meet the existing emergency is proposed by the Secretary of the Treasury if in his opinion the success of such plan would be inconsistent with the operation of the certificate plan.

[Emergency Banking Reg. 12, Mar. 7, 1933]

### § 121.14 Operations of Federal Reserve banks as fiscal agents of the United States.

Federal Reserve banks are authorized to conduct their normal and usual operations as fiscal agents of the United States in transactions pertaining to the exchange of obligations of the United States, such as making exchange of denominations, exchanging coupon for registered bonds, and vice versa, receiving registered bonds for transfer and effecting C. P. D. transactions.

[Emergency Banking Reg. 14, Mar. 7, 1933]

### § 121.15 Redeposit of deposits received pursuant to agreement or legislative authority.

The permission granted in § 121.7 that deposits heretofore received by any banking institution pursuant to agreement or legislative authority providing for segregation and repayment without restriction may be paid on demand, includes any bank in which any such deposits have been redeposited by or on behalf of the receiving bank in accordance with such agreement or legislative authority.

[Emergency Banking Reg. 15, Mar. 8, 1933]

Cross Reference: For deposits received pursuant to agreement or legislative authority, see § 121.7.

### § 121.16 Payment on subscriptions for Treasury bills of the United States.

All banking institutions are hereby authorized to take such steps and carry through such transactions as may be necessary to complete for their own account, or the account of their customers, payment on any subscriptions for Treasury bills of the United States for which payment was due on March 6, 1933.

[Emergency Banking Reg. 16, Mar. 10, 1933]

### § 121.17 Payment of checks by crediting owners' accounts.

Any banking institution may, when the owners consent thereto, pay checks issued prior to March 6, 1933, and received in due course of business by the drawee banking institution, by charging the amounts thereof to the accounts of the drawers and crediting such amounts to the accounts of such owners on the books of the drawee banking institution.

[Emergency Banking Reg. 17, Mar. 10, 1933]

### § 121.18 Subcription and payment for United States Government obligations; redemption of United States obligations.

(a) All banking institutions are hereby authorized to subscribe and pay for any United States Government obligations which may be offered for subscription and sale by the Secretary of the Treasury. Federal Reserve banks may carry on such functions as may be necessary to facilitate such transactions as are authorized by this section.

(b) All Federal Reserve banks are authorized to redeem matured obligations of the United States and to cash matured coupons provided no gold or gold certificates shall be paid out.

[Emergency Banking Reg. 18, Mar. 11, 1933]

### § 121.19 Substitution or release of collateral.

Except as otherwise prohibited by law, banking institutions may exercise their normal and usual functions in permitting substitution for or release of collateral held by them, provided other collateral or cash of equal or greater value is received in exchange therefor.

[Emergency Banking Reg. 19, Mar. 11, 1933]

### § 121.20 Opening of Federal Reserve banks and their branches.

All Federal Reserve banks and their branches and agencies may open March 13, 1933, and may remain open for the performance of all usual and normal banking functions except as prohibited by the Executive order issued by the President on March 10, 1933 (§ 120.3), and any further orders or regulations hereafter issued.

[Emergency Banking Reg. 20, Mar. 11, 1933]

### § 121.21 Opening of banking institutions not members of the Federal Reserve System or organized under the laws of the United States and which are not under State supervision.

Banking institutions which are not members of the Federal Reserve System or organized under the laws of the United States and which are not under the immediate supervision of any State authority may, on and after March 13, 1933, carry on their normal and usual functions, except as otherwise prohibited and except that no such institution shall pay out any gold coin, gold bullion or gold certificates, unless authorized by the secretary of the Treasury, nor allow withdrawal of any currency for hoarding, nor engage in any transaction in foreign exchange except such as may be undertaken for legitimate and normal business requirements, for reasonable traveling and other personal requirements, and for fulfillment of contracts entered into prior to March 6, 1933.

[Emergency Banking Reg. 21, Mar. 11, 1933]

### § 121.22 Opening of Federal land banks, Federal intermediate credit banks, etc.; delivery of gold coin, bullion, and certificates.

(a) All Federal land banks, Federal intermediate credit banks, joint stock land banks, Federal home loan banks, corporations organized under section 25(a) of the Federal Reserve Act, regional agricultural credit corporations and the Reconstruction Finance Corporation are hereby permitted to open at 9 o'clock, a. m., Monday, March 13, 1933, to perform their usual banking functions except to the extent prohibited by the Executive order of the President of the United States, issued March 10, 1933 (§ 120.3), by Federal or State law, or as may hereafter be limited or prohibited by regulations promulgated by the Secretary of the Treasury.

(b) This permission, as to each of the foregoing banking institutions, may be revoked in whole or in part by the Secretary of the Treasury at any time, and is granted as to each such institution upon the express condition that such institution shall deliver, within 30 days from the date hereof, to the Treasury of the United States or to a Federal Reserve bank or a Federal Reserve branch bank of the district in which it is located, all gold coin, gold bullion and gold certificates owned by it, and receive payment in credit or in other form of coin or in currency.

[Emergency Banking Reg. 22, Mar. 11, 1933, as amended Mar. 13, 1933]

Cross Reference: For Federal land banks, Federal intermediate credit banks, etc., see 12 CFR chapter VI.

### § 121.23 Withdrawals for hoarding.

No banking institution shall permit any withdrawal by any person when such institution, acting in good faith, shall deem that the withdrawal is intended for hoarding. Any banking institution, before permitting the withdrawal of large or unusual amounts of currency, may require from the person requesting such withdrawal, a full statement under oath of the purpose for which the currency is requested.

[Emergency Banking Reg. 23, Mar. 13, 1933]

### § 121.24 Official drafts drawn upon Secretary of State.

All banking institutions may cash official drafts drawn upon the Secretary of State for payment of salaries, traveling and other contingent expenses but not for personal account, and remit the amounts thereof to the banks from which the drafts are received, provided that no gold or gold certificates shall be paid out.

[Emergency Banking Reg. 24, Mar. 13, 1933]

### § 121.26 Transfer of payments of fees relating to patents, trade-marks, and designs.

All banking institutions may issue drafts transferring credits from any place in the United States to any other place in the United States and from any place in the United States to any place in a foreign country in connection with payments for domestic and foreign patent, trade-mark and design application fees, and in payment for domestic and foreign patent and trade-mark taxes and renewals. No gold or gold certificates shall be paid out, withdrawn, or exported under this section.

[Emergency Banking Reg. 26, Mar. 13, 1933]

### § 121.27 Withdrawals from member State banks not licensed to open.

(a) Any State banking institution which is a member of the Federal Reserve System and which is not licensed by the Secretary of the Treasury to reopen for the performance of usual banking functions may, with the approval of the appropriate State authority having immediate supervision of such banking institution, permit withdrawals by depositors and make payments to creditors of such percentage of the amounts due to them (not exceeding 5 percent) as it may determine: *Provided,* That at or before the time of such withdrawal or payment it shall set aside and make available for such purpose a fund for the benefit of and sufficient to pay to all depositors and creditors the percentage so determined.

(b) This section shall not in any way affect any right created by § 121.7 nor limit or restrict any payment thereby authorized.

(c) Any right to authorize withdrawals or payments under the terms of this section shall terminate upon the appointment of any conservator, receiver or other appropriate State official taking charge of the affairs of such banking institutions.

[Emergency Banking Reg. 27, Mar. 18, 1933]

### § 121.28 Modifying §§ 121.6, 121.10.

After the close of business on March 18, 1933, Treasury Regulation No. 6 (§ 121.6) and Treasury Regulation No. 10, as amended (§ 121.10), shall be without force or effect to authorize any banking transaction therein referred to.

[Emergency Banking Reg. 28, Mar. 18, 1933]

### § 121.29 Renewal of notes previously rediscounted or pledged.

Any banking institution which is a member of the Federal Reserve System and is not licensed to perform usual banking functions may rediscount or pledge with another banking institution renewals of notes which were previously rediscounted or pledged with such other banking institution.

[Emergency Banking Reg. 29, Mar. 21, 1933]

### § 121.30 Limited functions by banks controlled by conservators or State officials.

(a) Banking institutions which are members of the Federal Reserve System and of which actual possession and control have been taken (1) by conservators appointed pursuant to the act of March 9, 1933, or (2) by appropriate State officials appointed pursuant to State law, as permitted by the President's Executive Order 6080 of March 18, 1933 (§ 120.4), are permitted to transact such limited banking functions as may be authorized in accordance with law by the Comptroller of the Currency, in the case of national banks, or by the appropriate State officials, in the case of State member banks: *Provided, however,* That no such banking institution shall reopen for the performance of its usual and normal functions until it shall have received a license from the Secretary of the Treasury.

(b) This section shall not authorize any transaction with respect to the export or paying out of gold, or gold certificates, withdrawal of currency for hoarding or transactions in foreign exchange prohibited or restricted by the Executive Order 6073 of March 10, 1933 (§ 120.3).

[Emergency Banking Reg. 30, Mar. 28, 1933]

### § 121.31 Functions of non-licensed member banks as trustee, executor, etc.

Any banking institution which is a member of the Federal Reserve System and is not licensed to perform usual banking functions, but which is duly authorized to engage in the business of acting as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity, may transact such business in the normal and usual manner and may make payments on account of the principal or income of trust or other fiduciary funds to the persons entitled thereto: *Provided*, That except to the extent permitted by other emergency banking regulations, no such banking institution shall withdraw or pay out any trust or other fiduciary funds on deposit with any other department of such banking institution or make any other payment in connection with any trust or other fiduciary funds which would operate to discharge, as a whole or in part, any indebtedness, as distinguished from any trust or other fiduciary duty, of such banking institution.

[Emergency Banking Reg. 31, Mar. 30, 1933]

### § 121.32 Withdrawal of secured deposits from non-licensed State member banks.

(a) Any State bank which is a member of the Federal Reserve System, and is not licensed by the Secretary of the Treasury to perform usual banking functions, may permit withdrawals of deposits which are lawfully secured by collateral: *Provided*, That such withdrawals are (1) permissible under applicable law, (2) duly authorized by the board of directors of such bank, upon such terms with respect to the release of collateral as will fully protect all depositors and other creditors against the creation of any preferences, and (3) approved by the appropriate State authority having supervision of such bank.

(b) Any such bank is authorized to carry on such usual banking functions as may be essential to allow the withdrawals permitted by this section, subject to the provisions and restrictions otherwise prohibited.

[Emergency Banking Reg. 32, Mar. 30, 1933]

## PART 122—GENERAL LICENSES ISSUED UNDER EXECUTIVE ORDER 6073, AS AMENDED

### § 122.1 General license to transact normal banking business.

A general license to transact normal banking business is hereby granted to all banks hereafter authorized to begin business by the Comptroller of the Currency, effective upon the date of such authorization, and to all State banks hereafter admitted to membership in the Federal Reserve System, effective upon the date of such admission, except:

(a) To the extent prohibited in Executive Order 6073 of the President of the United States issued on March 10, 1933, as amended by Proclamation 2070 of December 30, 1933, and by Executive Order 6559 of January 15, 1934. (§§ 120.3 and 120.5 of this chapter);

(b) To the extent limited or prohibited by any Executive order of the President or by regulations of the Secretary of the Treasury.

This license may be revoked in whole or in part by the Secretary of the Treasury at any time.

(Sec. 5(b), 40 Stat. 415, as amended, sec. 4, 48 Stat. 2; 12 U.S.C. 95a, 95, EO 6073, Mar. 10, 1933, as amended)

[11 FR 296, Jan. 5, 1946]

NOTE: § 120.7 of this chapter (Proclamation 2725) excludes member banks of the Federal Reserve System from the scope of EO 6073.

## PART 123—REGISTRATION OF REPRESENTATIVE OFFICES OF FOREIGN BANKS

Sec.
123.1 Scope of regulation.
123.2 Definitions.
123.3 Information required to be filed.
123.4 Subsequent changes in information.
123.5 Time of registration.
123.6 Effect of State law.
123.7 Additional information.

AUTHORITY: Sec.10, International Banking Act of 1978, Pub. L. No. 95-369 (the "Act").

SOURCE: 44 FR 11215, Feb. 28, 1979, unless otherwise noted.

### § 123.1 Scope of regulation.

This regulation requires that foreign banks with representative offices in any State of the United States or in the District of Columbia register with the Secretary of the Treasury and report the information called for in §§ 123.3, 123.4 and 123.7.

### § 123.2 Definitions.

(a) *Representative Office.* For the purposes of this Part, a representative office shall be defined as an office of a foreign bank which engages in representational functions common to a banking business such as, without limitation, solicitation of new business, loan production, liaison between the bank's head office and correspondent banks in the United States, customer relations, etc. Branches and agencies of foreign banks are not representative offices.

(b) *Foreign Bank.* For the purposes of this Part, a foreign bank shall be defined as any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, or any such company. The term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating. The term "foreign bank" does not include central banks of foreign countries which are not engaged in a commercial banking business in the United States.

### § 123.3 Information required to be filed.

The information required under this Part must be submitted in letter form by a foreign bank over the signature of an appropriate executive officer of the bank to Secretary of the Treasury, Department of the Treasury, 15th & Pennsylvania Avenue NW., Washington, D.C. 20220, attention: Office of International Banking and Portfolio Investment.

A foreign bank may register more than one representative office in any letter. The information required in each letter shall be:

(a) Name and address of the head office of the foreign bank;

(b) Name(s) and address(es) of its representative office(s) in the United States;

(c) Name of the person(s) in charge of the representative office(s); and

(d) Brief description of the activities of the representative office(s).

### § 123.4 Subsequent changes in information.

Any change in the information supplied under Section 123.3 shall be submitted to the Treasury, at the address noted in Section 3, within 60 days of such change.

### § 123.5 Time of registration.

Foreign banks must register representative offices under this Part by March 17, 1979 or the date on which the office is established, whichever is later.

### § 123.6 Effect of State law.

Neither the Act nor this Part authorizes the establishment of any representative office in any State in contravention of State law.

### § 123.7 Additional information.

Additional information concerning registered representative office(s) shall be furnished from time to time to the Treasury, at the address noted in § 123.3, upon the specific request of the Secretary of the Treasury or his delegates.

## PART 127—EXECUTIVE ORDER OF JANUARY 15, 1934, REGULATING TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND EXPORT OF COIN AND CURRENCY

GENERAL

Sec.
127.0 General.
127.1 Prohibitions.
127.2 Possessions of the United States.
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PROHIBITIONS

127.9 Additional prohibitions.
127.10 Transactions prohibited.
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127.14 Executive Order No. 8389 no longer deemed part of Executive Order 6560.
127.15 Additional regulations.
127.16 Penalties.
127.17 Modification or revocation.

AUTHORITY: Sec. 5(b), 40 Stat. 415, as amended, sec. 13, 48 Stat. 343; 12 U.S.C. 95a, 213, EO 6260, Aug. 28, 1933.

CROSS REFERENCE: For transactions in foreign exchange, transfers of credit, and the export of coin and currency, see Part 128 of this chapter.

### GENERAL

SOURCE: §§ 127.0 to 127.7 contained in E.O. 6560, Jan. 15, 1934, unless otherwise noted.

### § 127.0 General.

I, Franklin D. Roosevelt, President of the United States of America, do declare that a period of national emergency continues to exist, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following regulations for the investigation, regulation, and prohibition of transactions in foreign exchange, transfers of credit between or payments by banking institutions as herein defined, and export of currency or silver coin, by any person within the United States or any place subject to the jurisdiction thereof.

### § 127.1 Prohibitions.

Every transaction in foreign exchange, transfer of credit between any banking institution within the United States and any banking institution outside of the United States (including any principal, agent, home office, branch, or correspondent outside of the United States of a banking institution within the United States), and the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, by any person within the United States, is hereby prohibited, except under license therefor issued pursuant to this part: *Provided, however,* That, except as prohibited under regulations prescribed by the Secretary of the Treasury, foreign exchange transactions and transfers of credit may be carried out without a license for (a) normal commercial or business requirements, (b) reasonable traveling and other personal requirements, or (c) the fulfillment of legally enforceable obligations incurred prior to March 9, 1933.

### § 127.2 Possessions of the United States.

Except as prohibited in regulations prescribed by the Secretary of the Treasury, transfers of credit between banking institutions in the continental United States and banking institutions in other places subject to the jurisdiction of the United States (including principals, agents, home offices, branches, or correspondents in such other places, of banking institutions within the continental United States), may be carried out without a license.

### § 127.3 Licenses.

The secretary of the Treasury, acting directly or through any agencies that he may designate, and the Federal Reserve banks acting in accordance with such rules and regulations as the Secretary of the Treasury may from time to time prescribe, are hereby designated as agencies for the granting of licenses as hereinafter provided. Licenses may be granted authorizing such transactions in foreign exchange, transfers of credit and exports of currency (other than gold certificates) or silver coin in such specific cases or classes of cases as the Secretary of the Treasury may determine in regulations prescribed hereunder and rulings made pursuant thereto.

### § 127.4 Reports.

The Federal Reserve banks shall keep themselves currently informed as to foreign exchange transactions entered into or consumated, and transfers of credit made between banking institutions outside of the continental United States and banking institutions, in their districts, and report to the Secretary of the Treasury all transactions in foreign exchange and all such transfers of credit not permitted under § 127.1 or § 127.2 which are effected or attempted in their districts without a license.

### § 127.5 Regulations.

The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the purposes of this part, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by the Federal Reserve banks and by such other agencies as the Secretary of the Treasury may designate; and the Secretary of the Treasury may require any person engaged in any transaction, transfer, export, or withdrawal referred to in this part to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction, transfer, export, or withdrawal is completed.

### § 127.6 Penalties.

Whoever, willfully violates or knowingly participates in the violation of any provision of this part or of any license, order, rule, or regulation issued or prescribed hereunder, shall be subject to the penalties provided in section 5(b) of the act of October 6, 1917 (40 Stat. 415), as amended by section 2 of the act of March 9, 1933. (48 Stat. 1; 12 U.S.C. 95a).

### § 127.7 Definitions.

As used in this part the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, and the District of Columbia; the term "person" means an individual, partnership, association, or corporation; and the term "banking institution" includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing and selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent; and, for the purposes of this part, each home office, branch, principal, agent, or correspondent of any person so engaged shall be regarded as a separate "banking institution."

## PROHIBITIONS

SOURCE: §§ 127.9 to 127.17 contained in EO 8389, 5 FR 1400, Apr. 12, 1940, as amended by EO 8785, 6 FR 2897, June 17, 1941; EO 8832, 6 FR 3715, July 29, 1941; EO 8963, 6 FR 634 Dec. 11, 1941; EO 8998, 6 FR 6785, Dec. 30, 1941; 3 CFR, Cum. Supp., unless otherwise noted.

CROSS REFERENCE: For Foreign Funds Control Regulations, see Part 520 of this title.

### § 127.9 Additional prohibitions.

All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in § 127.11, or any national thereof, or such transactions involve property in which any foreign country designated in § 127.11, or any national thereof, has at any time on or since the effective date of §§ 127.9–127.17 had any interest of any nature whatsoever, direct or indirect.

(a) All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

(b) All payments by or to any banking institution within the United States;

(c) All transactions in foreign exchange by any person within the United States;

(d) The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

(e) All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

(f) Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

### § 127.10 Transactions prohibited.

(a) All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in § 127.11 or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto: and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United Stated,

(b) The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

### § 127.11 Definitions of "foreign country" and "effective date."

The term "foreign country designated in § 127.11" means a foreign country included in the following schedule, and the term "effective date of §§ 127.9-127.17" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—Norway and Denmark;

(b) May 10, 1940—The Netherlands, Belgium and Luxembourg;

(c) June 17, 1940—France (including Monaco);

(d) July 10, 1940—Latvia, Estonia and Lithuania;

(e) October 9, 1940—Rumania;

(f) March 4, 1941—Bulgaria;

(g) March 13, 1941—Hungary;

(h) March 24, 1971—Yugoslavia;

(i) April 28, 1941—Greece, and

(j) June 14, 1941—Albania, Andorra, Austria, Czechoslovakia, Danzig, Finland, Germany, Italy, Liechtenstein, Poland, Portugal, San Marino, Spain, Sweden, Switzerland, and Union of Soviet Socialist Republics;

(k) June 14, 1941—China and Japan;

(l) June 14, 1941—Thailand;

(m) June 14, 1941—Hong Kong.

The "effective date of §§ 127.9-127.17" with respect to any foreign country not designated in this section shall be deemed to be June 14, 1941.

### § 127.12 Records and reports.

(a) The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5 (b) of the act of October 6, 1917 (40 Stat. 415), as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of §§ 127.9–127.17.

(b) Every person engaging in any of the transactions referred to in §§ 127.9 and 127.10 shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

### § 127.13 Additional definitions.

(a) As used in the first paragraph of § 127.9 "transactions [which] involve property in which any foreign country designated in § 127.11, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect," shall include, but not by way of limitation (1) any payment or transfer to any such foreign country or national thereof, (2) any export or withdrawal from the United States to such foreign country, and (3) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

(b) The term "United States" means the United States and any place subject to the jurisdiction thereof, and the term "continental United States" means the States of the United States, and the District of Columbia: *Provided, however,* That for the purposes of §§ 127.9 to 127.17, inclusive, the term, "United States" shall not be deemed to include any territory included within the term "foreign country" as defined in paragraph (d) of this section.

(c) The term "person" means an individual, partnership, association, corporation, or other organization.

(d) The term "foreign country" shall include, but not by way of limitation,

(1) The state and the government thereof on the effective date of §§ 127.9–127.17 as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof,

(2) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise de jure or de facto sovereignty over the area which on such effective date constituted such foreign country, and

(3) Any territory which on or since the effective date of §§ 127.9 to 127.17, inclusive, is controlled or occupied by the military, naval or police forces or other authority of such foreign country, and

(4) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing.

(e) The term "national" shall include,

(1) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of §§ 127.9–127.17,

(2) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of §§ 127.9–127.17 had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as defined in this section.

(3) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(4) Any other person who there is reasonable cause to believe is a "national" as defined in this section.

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in § 127.11 and/or nationals thereof are sufficient in the aggregate to constitute, within the meaning of the foregoing, control or 25 percent or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a "national" within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term "national" shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in § 127.11 or national thereof, as defined in this section.

(f) The term "banking institution" as used in §§ 127.9-127.17 shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

### § 127.14 Executive Order No. 8389 no longer deemed part of Executive Order 6560.

Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934 (§§ 127.1-127.9). Executive Order No. 6560 of January 15, 1934, and the regulations of November 12, 1934 (Part 128), are hereby modified in so far as they are inconsistent with the provisions of §§ 127.9-127.17, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to §§ 127.9-127.17: *Provided, however,* That all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of §§ 127.9-127.17 of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

### § 127.15 Additional regulations.

Without limitations as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provisions of §§ 127.9-127.17, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of §§ 127.9-127.17 and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

### § 127.16 Penalties.

Section 5(b) of the act of October 6, 1917, as amended, provides in part:

> * * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

### § 127.17 Modification or revocation.

Sections 127.9–127.17 and any regulations, rulings, licenses or instructions issued thereunder may be amended, modified or revoked at any time.

## PART 128—TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND EXPORT OF COIN AND CURRENCY

### Subpart A—Regulations

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128.1 General license.
128.2 Reports.
128.3 Use of information reported.
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128.5 Modification or revocation.

### Subpart B—Description of Forms Prescribed Under This Subpart

128.10 Copies.
128.11 International Capital Form BL-1: Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners," payable in dollars.
128.11a International Capital Form BL-2: Custody liabilities of reporting banks, brokers and dealers to "foreigners" payable in dollars.
128.11b International Capital Form BC: Reporting bank's own claims and selected claims of broker or dealer on "foreigners", payable in dollars.
128.12 International Capital Form BQ-1:Part 1—Reporting bank's own claims and selected claims of broker or dealer on "foreigners", Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in dollars.
Sec.
128.12a International Capital Form BQ-2: Part 1—Liabilities to, and claims on, "foreigners" of reporting bank, broker or dealer; Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in foreign currencies.
128.14 International Capital Form BL-1(SA): Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners", payable in dollars, in countries not listed separately on Form BL-1.
128.14a International Capital Form BL-2(SA): Custody liabilities of reporting banks, brokers and dealers to "foreigners" payable in dollars in countries not listed separately on Form BL-2.
128.14b International Capital Form BC(SA): Reporting bank's own claims and selected claims of broker or dealer on "foreigners" payable in dollars, in countries not listed separately on Form BC.
128.15 International Capital Form CM: Dollar deposit and certificate of deposit claims on banks abroad.
128.16 International Capital Form CQ-1: Financial liabilities to, and claims on, unaffiliated "foreigners."
128.16a International Capital Form CQ-2: Commercial liabilities to, and claims on, unaffiliated "foreigners."
128.17 International Capital Form S: Purchases and sales of "long-term" securities by "foreigners."
128.18 Supplement to Foreign Exchange Form S-1: U.S. Government bonds and notes held for "foreigners."
128.19—128.20 [Reserved]
128.21 Use of prescribed report forms for portions of data required to be reported thereon.
128.22 Special survey report forms.
128.23 Alternative methods of reporting.

### Subpart C—Description of Forms Prescribed Under This Subpart

128.30 Copies.
128.31 Foreign Currency Form FC-1: Weekly foreign currency report of banks in the United States.
128.32 Foreign Currency Form FC-1a: Monthly foreign currency report of banks in the United States.
128.33 Foreign Currency Form FC-2: Weekly consolidated foreign currency report on foreign branches and subsidiaries of United States banks.
128.34 Foreign Currency Form FC-2a: Monthly consolidated foreign currency report on foreign branches and subsidiaries of United States banks.

Sec.
128.35 Foreign Currency Form FC-3: Monthly report of assets, liabilities, and positions in specified foreign currencies of firms in the United States.
128.36 Foreign Currency Form FC-4: Quarterly consolidated report of assets, liabilities, and positions in specified currencies of foreign branches and subsidiaries of firms in the United States.
128.37 Special reports.

APPENDIX—DETERMINATIONS MADE BY NATIONAL ADVISORY COUNCIL PURSUANT TO SECTION 2 (A) AND (B) OF EO 10033

AUTHORITY: Sec. 5, 40 Stat. 415, as amended, sec. 8, 59 Stat. 515; 50 U.S.C. App. 5, 22 U.S.C. 286f, EO 6560, Jan. 15, 1934, EO 10033, 14 FR 561, 3 CFR, 1949-1953 Comp., p. 226, unless otherwise noted.

NOTE: For a document adopting certain forms prescribed by the provisions of Part 128 see 39 FR 37362, Oct. 21, 1974.

## Subpart A—Regulations

### § 128.1 General license.

Licenses may be granted, and a general license is hereby granted, to all individuals, partnerships, associations, and corporations, authorizing any and all transactions in foreign exchange, transfers of credit, and exports of currency (other than gold certificates) and silver coin. The general license granted in this section authorizes transactions to be carried out which are permitted by Executive Order 6560 of January 15, 1934 (Part 127 of this chapter), under license therefor issued pursuant to such Executive order; but does not authorize any transaction to be carried out which, at the time, is prohibited by any other order or by any law, rulings, or regulation.

[28 FR 4256, Apr. 30, 1963]

### § 128.2 Reports.

(a) In order to effectuate the purposes of the Emergency Banking Act of 1933 (12 U.S.C. 95a) and Executive Order 6560 of January 15, 1934 (Part 127 of this chapter), and the International Investment Survey Act of 1976 (90 Stat. 2059, 22 U.S.C. 3101 note), and in order that information requested by the International Monetary Fund under the articles of agreement of the Fund may be obtained in accordance with section 8(a) of the Bretton Woods Agreements Act (sec. 8(a) 59 Stat. 515; 22 U.S.C. 286f and Executive Order No. 10033, 14 FR 561; 3 CFR, 1949 Supp.), every person subject to the jurisdiction of the United States engaging (1) in any transaction in foreign exchange; (2) in any transfer of credit between any person within the United States and any person outside of the United States; or (3) in the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, shall furnish information relative thereto to such extent and in such manner and at such intervals as is required by report forms and instructions prescribed in Subpart B of this part.

(b) In order to effectuate the purposes of the Emergency Banking Act (12 U.S.C. 95a) and Executive Order 6560 of January 15, 1934, (Part 127 of this chapter), and to provide additional data on the nature and source of flows of mobile capital, including transactions by large United States business enterprises and their foreign affiliates, as required by Title II of Pub. Law 93-110 (87 Stat. 352), every United States person engaging (1) in any transaction in foreign exchange; (2) in any transfer of credit between any person within the United States and any person outside the United States; or (3) in the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, shall furnish information relative thereto to such extent and in such manner and at such intervals as is required by report forms and instructions prescribed in Subpart C of this Part. Information shall also be furnished by every United States person or persons with regard to any foreign person controlled by such United States person or persons as provided in Subpart C of this Part.

(c) All persons required to report, other than banks and banking institutions, shall furnish the reports required under Subparts B and C of this Part to the Federal Reserve Bank of New York. Banks and banking institutions shall furnish the required reports to the Federal Reserve Bank of the district in which such bank or banking institution has its principal place of business in the United States. In the event that any person required to report has no principal place of business within a Federal Reserve district, the information shall be furnished directly to the Office of the Assistant Secretary for Economic Policy, Department of the Treasury, Washington, D.C. 20220 or to such agency as the Department of the Treasury may designate.

(Title II, Pub. L. 93-110, 87 Stat. 352 (31 U.S.C. 1141-1143))

[39 FR 36962, Oct. 16, 1974, as amended at 42 FR 4122, Jan. 24, 1977; 42 FR 63096, Dec. 14, 1977]

### § 128.3 Use of information reported.

The information reported on the forms required under Subparts B and C will not be disclosed publicly by the Department of the Treasury or by any other Federal agency having access to the information as provided herein. Data reported on these forms may be published or released in the aggregate in a manner which will not reveal the amounts reported by any individual reporting bank or nonbanking firm. The Department may furnish to other Federal agencies data reported on these forms to the extent permitted by the Federal Reports Act, 44 U.S.C. 3501, *et seq.* In addition, the Department may furnish other Federal agencies data reported on the forms required under Subpart B to the extent permitted by the International Investment Survey Act of 1976, 22 U.S.C. 3101 note, et seq.

[42 FR 4122, Jan. 24, 1977]

### § 128.4 Penalties.

(a) Whoever willfully fails to submit a report required under this part may be criminally prosecuted and upon conviction fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both. Any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(b) Whoever fails to submit a report required under Subpart C of this Part may be assessed a civil penalty not exceeding $10,000.

(Sec. 2, Emergency Banking Act of 1933, 48 Stat. 1 (12 U.S.C. 95a); sec. 203, Pub. Law 93-110, 87 Stat. 352 (31 U.S.C. 1143))

[39 FR 36962, Oct. 16, 1974]

### § 128.5 Modification or revocation.

The regulations in this part and the general license granted in this part may be modified or revoked at any time.

[28 FR 4256, Apr. 30, 1963. Redesignated at 39 FR 36962, Oct. 16, 1974]

## Subpart B—Description of Forms Prescribed Under This Subpart [1]

AUTHORITY: Sec. 5 Pub. L. 65-91, 40 Stat. 415, 12 U.S.C. 95a, 50 U.S.C. App. 5 as amended: Sec. 8. Pub. L. 79-171, 59 Stat. 515, 22 U.S.C. 286f: Sec. 4 Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3103: EO 6560, Jan. 15, 1934; EO 10033, 14 FR 561, 3 CFR, 1949—.1953, Comp: EO 11961, January 9, 1977, 42 FR 4321, as amended, unless otherwise noted.

### § 128.10 Copies.

Copies of the forms described in this subpart with instructions may be obtained from any Federal Reserve bank or from the Office of the Assistant Secretary for Economic Policy, Treasury Department, Washington, D.C. 20220.

[42 FR 63096, Dec. 14, 1977]

### § 128.11 International Capital Form BL-1: Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners", payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank their own liabilities to "foreigners", payable in dollars, as of the last day of business of the month.

[45 FR 83213, Dec. 18, 1980]

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[1] The specific reporting requirements contained in this subpart have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942, and for other purposes.

### § 128.11a International Capital Form BL-2: Custody liabilities of reporting banks, brokers and dealers to "foreigners"payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank assets held on behalf of "foreigners" which represent claims payable in dollars on institutions or individuals in the United States, as of the last day of business of the month.

[42 FR 63096, Dec. 14, 1977]

### § 128.11b International Capital Form BC: Reporting bank's own claims and selected claims of broker or dealer on "foreigners", payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank their own claims on "foreigners',' payable in dollars, as of the last day of business of each month.

[45 FR 83213, Dec. 18, 1980]

### § 128.12 International Capital Form BQ-1: Part 1—Reporting bank's own claims and selected claims of broker or dealer on "foreigners", Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in dollars.

On this form banks, banking institutions, brokers and dealers in the United States are required to report quarterly, as of the last business day of each March, June, September and December, to a Federal Reserve bank their own claims on "foreigners", payable in dollars, and assets held for the account of domestic customers which represent claims on "foreigners", payable in dollars.

[45 FR 83213, Dec. 18, 1980]

### § 128.12a International Capital Form BQ-2: Part 1—Liabilities to, and claims on, "foreigners" of reporting bank, broker or dealer; Part 2—Domestic customers' claims on "foreigners" held by reporting bank, broker or dealer, payable in foreign currencies.

On this form banks, banking institutions, brokers and dealers in the United States are required to report quarterly as of the last business day of each March, June, September and December to a Federal Reserve bank their own liabilities to, and claims on, "foreigners", payable in foreign currencies, and assets held for the account of domestic customers which represent claims on "foreigners", payable in foreign currencies.

[45 FR 83214, Dec. 18, 1980]

### § 128.14 International Capital Form BL-1(SA): Reporting bank's own liabilities and selected liabilities of broker or dealer to "foreigners", payable in dollars, in countries not listed separately on Form BL-1.

On this form banks, banking institutions, brokers and dealers in the United States are required to report twice a year, as of June 30 and December 31, to a Federal Reserve bank their own liabilities to "foreigners", payable in dollars, in countries not listed separately on Form BL-1.

[45 FR 83214, Dec. 18, 1980]

### § 128.14a International Capital Form BL-2(SA): Custody liabilities of reporting banks, brokers and dealers to "foreigners" payable in dollars in countries not listed separately on Form BL-2.

On this form banks, banking institutions, brokers and dealers in the United States are required to report twice a year, as of June 30 and December 31 to a Federal Reserve bank assets held on behalf of "foreigners" in countries not listed separately on Form BL-2 which represent claims payable in dollars on institutions or individuals in the United States.

[42 FR 63097, Dec. 14, 1977]

### § 128.14b International Capital Form BC(SA): Reporting bank's own claims and selected claims of broker or dealer on "foreigners", payable in dollars, in countries not listed separately on Form BC.

On this form banks, banking institutions, brokers and dealers in the United States are required to report twice a year, as of June 30 and December 31, to a Federal Reserve bank their own claims on "foreigners" payable in dollars in countries not listed separately on Form BC.

[45 FR 83214, Dec. 18, 1980]

### § 128.15 International Capital Form CM: Dollar deposit and certificate of deposit claims on banks abroad.

On this form exporters, importers, industrial and commercial concerns and other nonbanking persons in the United States are required to report monthly, as of the last business day of the month, to the Federal Reserve Bank of New York their U.S. dollar deposit and certificate of deposit claims on banks located abroad held in their name or held for their account in banks abroad by U.S. or foreign custodians.

[43 FR 50175, Oct. 27, 1978]

### § 128.16 International Capital Form CQ-1, Financial liabilities to, and claims on, unaffiliated "foreigners."

On this form exporters, importers, industrial and commercial concerns and other nonbanking persons in the United States are required to report quarterly as of the last business day of each March, June, September and December, to the Federal Reserve Bank of New York their financial liabilities to, and claims on, unaffiliated "foreigners" acquired or held, either in the United States or abroad, by reporters for their own account or for the account of others.

[43 FR 50175, Oct. 27, 1978]

### § 128.16a International Capital Form CQ-2: Commercial liabilities to, and claims on, unaffiliated "foreigners."

On this form exporters, importers, industrial and commercial concerns and other nonbanking persons in the United States are required to report quarterly as of the last business day of each March, June, September and December, to the Federal Reserve Bank of New York their commercial liabilities to, and claims on, unaffiliated "foreigners" acquired or held either in the United States or abroad, by reporters for their own account or for the account of others.

[43 FR 50175, Oct. 27, 1978]

### § 128.17 International Capital Form S: Purchases and sales of "long-term" securities by "foreigners."

On this form banks and banking institutions, brokers and dealers in the United States are required to report monthly to a Federal Reserve bank transactions in "long-term" and certain other securities executed in the United States for account of "foreigners" and by "foreign official institutions" and transactions in "long-term" securities executed abroad for their own account and for the account of their domestic customers.

[42 FR 4122, Jan. 24, 1977]

### § 128.18 Supplement to Foreign Exchange Form S-1: U.S. Government bonds and notes held for "foreigners."

On this form bankers and banking institutions, brokers and dealers in the United States are required to report to a Federal Reserve bank, as requested by the Treasury Department, their holdings for the account of "foreigns" of United States Government bonds and notes.

[28 FR 4256, Apr. 30, 1963]

### §§ 128.19—128.20 [Reserved]

### § 128.21 Use of prescribed report forms for portions of data required to be reported thereon.

The report forms prescribed in §§ 128.11-128.20 are also prescribed for use, as needed, for the collection at intervals other than the ones stated of a portion of the data required on each form in the same or greater detail.

[28 FR 4256, Apr. 30, 1963]

### § 128.22 Special survey report forms.

On report forms other than those described in §§ 128.11 to 128.20 reports are required from time to time to provide detailed information on the content of aggregate data reported on these forms and also to provide qualitative information necessary for adequate analysis of the data reported.

[28 FR 4256, Apr. 30, 1963]

### § 128.23 Alternative methods of reporting.

In lieu of reports on the forms described in this subpart, the required data may be reported on computer printouts in the same format, signed by a responsible office of the reporting institution; or on punch cards, magnetic tape, or other media that can be processed by data processing equipment, accompanied by a printed copy of the data reported which must be signed by a responsible officer of the reporting institution. The proposed method and format of reporting must be acceptable to the Federal Reserve Bank of the district in which the report is filed, and must be approved in writing by that bank.

[42 FR 63097, Dec. 14, 1977]

## Subpart C—Description of Forms Prescribed Under This Subpart

AUTHORITY: Title II, Pub. L. 93-110, 87 Stat. 352 (31 U.S.C. 1141-1143), unless otherwise noted.

### § 128.30 Copies.

Copies of the forms described in this subpart with instructions may be obtained from a Federal Reserve bank or from the Office of the Assistant Secretary for Economic Policy, Department of the Treasury, Washington, D.C. 20220.

(Sec. 5, Pub. L. 65-91, 40 Stat. 415, 12 U.S.C. 95a, 50 U.S.C. App. 5 as amended; Sec. 8, Pub. L. 79-171, 59 Stat. 515, 22 U.S.C. 286f; Sec. 4, Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3103; E.O. 6560, Jan. 15, 1934; E.O. 10033, 14 FR 561, 3 CFR, 1949—1953 Comp.; E.O. 11961, January 9, 1977, 42 FR 4321, as amended)

[42 FR 63097, Dec. 14, 1977]

### § 128.31 Foreign Currency Form FC-1: Weekly foreign currency report of banks in the United States.

On this form, banks and banking institutions in the United States are required to report weekly to a Federal Reserve Bank their assets, liabilities, and positions in the foreign currencies specified on the form, as of the close of business on Wednesday.

[40 FR 46102, Oct. 6, 1975]

### § 128.32 Foreign Currency Form FC-1a: Monthly foreign currency report of banks in the United States.

On this form, banks and banking institutions in the United States are required to report to a Federal Reserve Bank their assets, liabilities, and positions, by maturity, in the foreign currencies specified on the form, as of close of business on the last business day of the month.

[40 FR 46102, Oct. 6, 1975]

### § 128.33 Foreign Currency Form FC-2: Weekly consolidated foreign currency report on foreign branches and subsidiaries of United States banks.

On this form, United States banks and banking institutions are required to report weekly to a Federal Reserve Bank the consolidated assets, liabilities, and positions of their foreign branches and majority-owned foreign subsidiaries in the currencies specified on the form as of the close of business on Wednesday.

[40 FR 46102, Oct. 6, 1975]

### § 128.34 Foreign Currency Form FC-2a: Monthly consolidated foreign currency report on foreign branches and subsidiaries of United States banks.

On this form, United States banks and banking institutions are required to report monthly to a Federal Reserve Bank the consolidated assets, liabilities, and positions, by maturity, of their foreign branches and majority-owned foreign subsidiaries in the currencies specified on the form as of close of business on the last business day of the month.

[40 FR 46102, Oct. 6, 1975]

### § 128.35 Foreign Currency Form FC-3: Monthly report of assets, liabilities, and positions in specified foreign currencies of firms in the United States.

On this form nonbanking business concerns and nonprofit institutions in the United States are required to report monthly to the Federal Reserve Bank of New York their assets, liabilities, and positions in the foreign currencies specified on the form, as of the last day of business of the month.

[41 FR 43720, Oct. 4, 1976]

### § 128.36 Foreign Currency Form FC-4: Quarterly consolidated report of assets, liabilities, and positions in specified currencies of foreign branches and subsidiaries of firms in the United States.

On this report form, nonbanking firms and nonprofit institutions in the United States are required to report quarterly to the Federal Reserve Bank of New York the consolidated assets, liabilities, and positions of their foreign branches and majority-owned foreign partnerships and subsidiaries in the currencies specified on the form as of the last day of business of the calendar quarter.

[40 FR 8020, Feb. 24, 1975]

### § 128.37 Special reports.

At times when prompt or expanded information on current conditions in the foreign exchange market is needed by the Department of the Treasury, special reports may be required at more frequent intervals or at different intervals than those specified on the forms, covering more detailed information than that required by the forms, and covering information related to that required by the forms. Special reports may be required to be submitted by telegraph or other rapid means of communication.

[39 FR 36963, Oct. 16, 1974]

## APPENDIX—DETERMINATIONS MADE BY NATIONAL ADVISORY COUNCIL PURSUANT TO SECTION 2 (a) AND (b) OF EO 10033

### I. Determination of the National Advisory Council pursuant to EO 10033.

In an action dated September 7, 1965, the National Advisory Council on International Monetary and Financial Problems made the following determination pursuant to section 2(a) of E.O. 10033 of February 8, 1949.

*Action 65 (E.O.)-49.* The National Advisory Council, having consulted with the Director of the Bureau of the Budget, determines that current information with respect to international capital movements, derived from data on U.S. liabilities to and claims on foreigners and transactions in securities with foreigners, and current information with respect to U.S. gold holdings, foreign-currency holdings, and dollar liabilities to foreigners, are essential in order that the United States may comply with official requests of the International Monetary Fund for information with respect to the U.S. balance of payments and monetary reserves.

Action No. 320, March 17, 1949, is superseded by this determination and is hereby revoked.

### II. Designation of the Treasury Department by the Director of the Bureau of the Budget pursuant to section 2(b) of E.O. 10033.

On December 1, 1965, the Treasury Department was designated, pursuant to section 2(b) of E.O. 10033 of February 8, 1949, to collect information for the International Monetary Fund under the National Advisory Council determination of September 7, 1965. The letter containing the designation reads as follows:

DECEMBER 1, 1965.

HON. HENRY H. FOWLER,
*Secretary of the Treasury,*
*Washington, D.C. 20220.*

DEAR MR. SECRETARY: On September 7, 1965, the National Advisory Council, after consultation with this Bureau in accordance with section 2(a) of Executive Order 10033, made the following determination (Action 65 (E.O.)-49):

"The National Advisory Council, having consulted with the Director of the Bureau of the Budget, determines that current information with respect to international capital movements, derived from data on U.S. liabilities to and claims on foreigners and transactions in securities with foreigners, and current information with respect to U.S. gold holdings, foreign-currency holdings, and dollar liabilities to foreigners, are essential in order that the United States may comply with official requests of the International Monetary Fund for information with respect to the U.S. balance of payments and monetary reserves."

It is hereby determined, pursuant to section 2(b) of Executive Order 10033, that the Treasury Department shall collect information pertaining to capital movements between the United States and foreign countries and pertaining to the monetary reserves of the United States, except information pertaining to direct-investment transactions, U.S. Government foreign lending operations, and claims and liabilities of U.S. Government agencies (other than public debt obligations), which is collected by the Department of Commerce.

This letter supersedes the earlier determination as to the responsibilities of the Treasury Department in this area, dated April 21, 1949, as amended May 4, 1950.

Sincerely yours,
RAYMOND T. BOWMAN,
*Assistant Director for*
*Statistical Standards.*

[31 FR 8179, June 10, 1966]

# PART 129—PORTFOLIO INVESTMENT SURVEY REGULATIONS

## Subpart A—Basic Requirements

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129.14 Due date.

## Subpart C—Rules and Regulations for Survey of U.S. Portfolio Investment Abroad [Reserved]

AUTHORITY: Pub. L. 94-472, 90 Stat. 2059 (22 U.S.C. 3101, et seq.), as amended; EO 11961, 42 FR 4321, January 24, 1977, as amended.

SOURCE: 43 FR 51629, Nov. 6, 1978, unless otherwise noted.

## Subpart A—Basic Requirements

### § 129.1 Purpose.

The purpose of this Part is to set forth the rules and regulations necessary to implement the data collection programs and analyses with respect to portfolio investment provided for by the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101, et seq., as amended (the "Act")). The overall purpose of the Act is to provide comprehensive and reliable information concerning international investment, including portfolio investment, while minimizing the reporting burden on respondents.

### § 129.2 General definitions.

(a) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and all territories and possessions of the United States.

(b) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) "Person," means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the U.S. Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States.

(e) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) "International investment" means (1) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a U.S. person, and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by U.S. persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(h) "Direct investment" means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

(i) "Portfolio investment" means any international investment which is not direct investment.

(j) "Foreign official institution" means central governments of foreign countries and their possessions, including recognized central banks of issue, including the following:

(1) The treasuries, including ministries of finance, or corresponding departments of national governments; central banks, including all departments thereof; stabilization funds, including official exchange stabilization funds, exchange control offices, or other governmental exchange authorities; and fiscal agents of the national governments which have as an important part of their functions, activities similar to those of a treasury, central bank or stabilization fund—provided, that branches or agencies of foreign official banking institutions which are located in the United States shall *not* be considered foreign official institutions for purposes of data collection programs set forth in this Part.

(2) Diplomatic and consular establishments and other departments and agencies of national governments, such as military departments, purchasing commissions and state trading organizations.

(3) Any international or regional organization, or subordinate or affiliated agency thereof, created by treaty or convention between sovereign states. Provided, that the term "foreign official institution" shall *not* include the following:

(i) Nationalized or other government-owned banks or corporations unless such banks or corporations fall within one of the descriptive categories set forth in paragraph (j)(1) of this section.

(ii) Personal accounts of foreign diplomatic and other official representatives of foreign countries.

### § 129.3 Recordkeeping requirements.

(a) Persons subject to the jurisdiction of the United States shall maintain all information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is necessary for carrying out the surveys and studies provided for by the Act.

(b) The information cited in paragraph (a) of this section, and the reports required under this Part, shall be retained for 3 years from the date of submission of the reports required in Subparts B and C.

### § 129.4 Reporting requirements.

Persons subject to the jurisdiction of the United States shall furnish under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

Such reports may be required from, among others, U.S. persons in which foreign persons hold portfolio investment; U.S. holders of record which hold, on behalf of foreign persons, portfolio investment in U.S. persons; U.S. persons which hold portfolio investment abroad; U.S. holders of record which hold, on behalf of U.S. persons, portfolio investment abroad; and U.S. intermediaries which assist or intervene in the purchase or sale of interests in portfolio investment.

### § 129.5 Response required.

Reports, as specified in Subparts B and C of this Part, are required from all persons subject to the reporting requirements, whether or not they are contacted by Treasury. In addition, any person Treasury contacts, either by sending report forms or by inquiring in writing whether the person is subject to the reporting requirements of a survey conducted pursuant to this Part, must reply in writing. The response must be made either by filing the properly completed report form or else by filing a written certified claim for exemption from filing a report. A claim for exemption must be filed within 30 days after the end of the calendar year being surveyed or within 30 days after receiving the forms, whichever is later.

### § 129.6 Confidentiality.

Information collected pursuant to this Part will be kept in confidence.

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) designated by the President to perform functions under the Act.

(b) Subject to § 129.6(d), the President may authorize the exchange between agencies or officials designated by him of this information as he deems necessary to carry out the purposes of the Act.

(c) Nothing in this Part shall be construed to require any Federal Agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes within the U.S. Government or for enforcement proceedings as provided for in the Act.

(e) No official or employee (including consultants and contractors and their employees) may publish or make available to any other person any information collected pursuant to this Part in a manner that the person who furnished the information can be specifically identified except as provided for in this section.

(f) No person can compel the submission or disclosure of reports or constituent parts thereof, or copies of such reports or constituent parts thereof, prepared pursuant to this Part without the prior written consent of the person who maintained or furnished the report and also of the customer of the person who maintained or furnished the report where the information supplied is identifiable as being derived from the records of the customer.

### § 129.7 Penalties.

(a) Whoever fails to furnish any information required by the Act or by any other rule, regulation, order, or instruction promulgated under the Act may be subject to a civil penalty not exceeding $10,000 in a proceeding brought in an appropriate U.S. district court or to injunctive relief commanding such person to comply, or both.

(b) Whoever willfully fails to submit any information required by the Act or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, maybe imprisoned for not more than 1 year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both.

(c) Any person who willfully violates § 129.6 shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law.

### § 129.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on the appropriate report form must be answered, except where specifically exempted.

(b) *Estimates.* When actual information cannot be obtained estimates will be accepted but should be labeled as such.

(c) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any question, the required information should be submitted on supplementary sheets appropriately labeled and referenced to the item number and the form. All supplementary sheets should be attached to the form to which they pertain.

(d) *Number of copies.* A single original copy of each report shall be filed with the Department of the Treasury. In addition, each person reporting shall retain a copy of his report.

(e) *Extension of reporting deadline.* Written requests for extensions will be considered provided they are received at least fifteen (15) days prior to the due date of the report and that they enumerate substantive reasons necessitating the extension.

(f) *Other.* Instructions concerning filing dates, mailing and information addresses, and specific instructions for completing the forms are contained in each report. General inquiries should be directed to:

Foreign Portfolio Investment Project, Office of the Assistant Secretary (Economic Policy), U.S. Department of the Treasury, Washington, D.C. 20220, 202-634-2271.

## Subpart B—Rules and Regulations for Survey of Foreign Portfolio Investment in U.S. Securities

### § 129.9 Basic requirement.

A survey of foreign portfolio investment in U.S. securities will be conducted covering foreign ownership as of December 31, 1978. In addition to the requirements contained in Subpart A herein, specific additional rules and regulations are given below.

### § 129.10 Specific definitions.

(a) "Securities," for purposes of this survey, means long-term marketable U.S. public and private issues of debt and equity. Long-term securities have no contractual maturity (stocks) or an original maturity of more than 1 year from date of issue. Marketable securities include both bearer and registered securities that are publicly traded or privately placed in United States and/or foreign markets. The term "securities" includes common and preferred stocks or investment company shares, including rights, warrants, and scrip; bonds, debentures, equipment trust certificates, and similar long-term corporate debt instruments; marketable long-term debt obligations of the U.S. Treasury, Federal financing institutions, U.S. Government corporations, and federally sponsored agencies; and long-term debt obligations of State and local governments, including any agencies, corporations, financing institutions, or other instrumentalities thereof.

(b) "U.S. issuer" means any U.S. person who issues, through public or private distribution, any security.

(c) "United States holder of record" means any U.S. person who is carried on stock transfer records or other ownership records as having title to any security of a U.S. issuer which he is holding on behalf of another person. "U.S. holder of record" includes such persons as nominees, custodians, agents, trustees, other fiduciaries, banks, brokers, or other intermediaries, who hold title to investments on behalf of another person. The term also extends to any U.S. person acting as a custodian for bearer securities, even though such person is not carried on ownership records as holding title to such securities.

(d) "Reporter" means the U.S. person required to file a report, or for which the report is required to be filed, pursuant to this Subpart.

(e) "Foreign parent," for purposes of this survey, means any foreign person who, directly or indirectly, owns or controls, ten (10) percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent ownership interest in an unincorporated United States enterprise.

(f) "Employer's identification number (EI)" means the unique taxpayer's identification number assigned to an employer by the Internal Revenue Service.

### § 129.11 Form TD F 90-19.1—Report for U.S. issuers of securities (hereinafter referred to as "Form FPI-1")

(a) Who must report. The reporting obligations of U.S. issuers are governed by the following classifications:

(1) Routine large issuer reporter—asset test. A report on Form FPI-1 is required from every U.S. issuer irrespective of whether it has evidence of foreign investment, which, as of the latest available closing date of its accounting records had:

(i) Total consolidated assets of more than $50 million, if it is a nonbanking business enterprise.

(ii) Total consolidated assets of more than $100 million, if it is a banking business enterprise.

(2) Selected small issuer reporters—foreign ownership test. Except as otherwise provided in § 129.11(c) below, a report on Form FPI-1 is required from every U.S. issuer who is not a routine reporter under § 129.11(a)(1) above, and who has knowledge of foreign ownership of its securities or who is informed by Treasury that there is foreign ownership of its securities. This requirement applies without regard to size of the issuer's assets determined under §§ 129.11(a)(1) (i) and (ii) above.

(b) Consolidated reports. Where several U.S. corporations are affiliated with or under the control of a single

U.S. parent corporation, the parent corporation shall file a consolidated Form FPI-1 following generally accepted U.S. accounting principles as required for reports to shareholders. United States affiliates or subsidiaries which are not normally consolidated in the parent corporation's report to shareholders, must file their own Form FPI-1 if they meet the requirements in § 129.11(a) above.

(c) Total exemption—asset test. A report on Form FPI-1 is not required from any U.S. issuer, irrespective of whether it has knowledge of foreign ownership of its securities, who, as of the latest available closing date of its books, had total consolidated assets of less than $2 million.

(d) Information reported. On Form FPI-1, private U.S. issuers of securities are required to report foreign ownership, by country and issue, of securities issued by them which are held by foreign persons as of December 31, 1978 and to supply certain information relating to ownership distribution (domestic and foreign) of outstanding issues, type of foreign owner, industry of U.S. issuer and other information. Specific instructions as to information to be reported are contained in the instructions to Form FPI-1.

### § 129.12 Form TD F 90-19.2—Report for U.S. holders of record (hereinafter referred to as "Form FPI-2").

(a) Who must report. Except as otherwise provided in § 129.12(c) below, a report is required to be filed on Form FPI-2 by any U.S. person who acts on behalf of a foreign person as a holder of record of any security of a U.S. issuer. Included are U.S. trustees who hold securities in U.S. trusts created by foreign insurance companies and other foreign companies or foreign governments.

(b) Combined report. Where several nominees, trustees, or other holders of record are affiliated with or under the common control of a single bank, broker, or other institution, the U.S. parent institution shall file a combined Form FPI-2 on behalf of all such holders of record.

(c) Exempted holders of record. A report on Form FPI-2 is not required from any holder of record who held for all its foreign customers, combined investments in securities of U.S. issuers aggregating $50,000 or less based on fair market value as of December 31, 1978. This exemption does not apply to holders of record under common management or control as described in § 129.12(b) above, except where aggregate holdings of all holders of record under a single parent institution total $50,000 or less.

(d) Information reported. On Form FPI-2, U.S. holders of record are required to report foreign ownership, by country and issue, of all securities which they held on behalf of foreign persons as of December 31, 1978. Specific instructions as to information to be reported are contained in the instructions to Form FPI-2.

### § 129.13 Special reports.

Any person subject to the provisions of this subpart may be required to submit a special report which the Secretary of the Treasury deems necessary to supplement information supplied on Forms FPI-1 and FPI-2 or which may otherwise be necessary to enable the Secretary of the Treasury to carry out his function under the Act.

### § 129.14 Due date.

Reports on Forms FPI-1 and FPI-2 are due on March 31, 1979.

## Subpart C—Rules and Regulations for Survey of U.S. Portfolio Investment Abroad [Reserved]

## PARTS 130–199 [RESERVED]

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# FINDING AIDS

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A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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# Material Approved for Incorporation by Reference

The Director of the Federal Register approves the following incorporations by reference effective July 1, 1982, unless otherwise noted (5 U.S.C. 552(a) and 1 CFR Part 51). For more information on incorporation by reference, see the preliminary pages of this volume.

## 31 CFR CHAPTER I (PARTS 0 TO 199) MONETARY OFFICES, DEPARTMENT OF TREASURY

| | 31 CFR |
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| **American National Standards Institute**<br>1430 Broadway, New York, NY 10018 | |
| ANSI A117.1—80, Specifications For Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped. | 51.55(k)(9) |
| (The following standard is available from: The Engineering Society Library, 345 E. 47th St., New York, NY 10017 (212) 644–7611 and Document Engineering Company, 15210 Stagg St., Van Nuys, CA 91405 (213) 782–1010, 873–5366.) | |
| ANSI A117.1—61 (R 71) Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped. | 51.55(k)(9) |

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| 103.43 Revised | 2176 |
| 103.45 Revised | 2176 |
| 103.51 Added | 2176 |
| 128.19 Revised | 1637 |

## 1973–1974

(Regulations published from July 1, 1973 through June 30, 1974)

| **31 CFR** | 38 (39*) FR Page |
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| Subtitle A | |
| 0 *Appendix A amended | 19470 |
| 2 Added | 19322 |
| 3.7 *(c) amended | 19470 |
| 9 *Added (provisions derived from 32A CFR EPO Reg. 4) | 10898 |
| *Authority citation corrected | 11882 |
| 9.6 *Corrected | 11882 |
| Chapter I | |
| 51.3 Revised | 18668 |
| (b) corrected | 19801 |
| 51.5 Amended | 18668 |
| 51.11 (b) amended | 18668 |
| 51.22 *(a) revised | 8324 |

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Note: (*) identifies changes published in 1974.

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| 51.24 (a) revised | 18668 |
| 51.24 *(a) amended; (b) and (c) redesignated as (c) and (d); new (b) added | 8324 |
| 51.25 (a) and (b) amended | 18669 |
| 51.25 *(b) heading revised and text amended | 8324 |
| 51.26 (a) amended | 18669 |
| 51.27 *(a) amended | 8324 |
| 51.33 *(a) and (b) revised | 8324 |
| 51.40 *(b) amended | 8325 |
| 91.1 Revised | 24897 |
| 91.2 Revised | 24897 |
| 91.8 Revised | 24898 |
| 94 *added | 13881 |

## 1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

| **31 CFR** | 39 (40†) FR Page |
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| Subtitle A | |
| 1.1–1.6 Revised and designated as Subpart A; Appendices A through M added | †7440 |
| 1.7—1.11 Designated as Subpart B | †7440 |
| 1.7 Revised | †7440 |
| Chapter I | |
| 51.20 (e) added | 40248 |
| 54 Removed | †16844 |
| 90.6 Revised | †16844 |
| 93.1—93.3 Removed | †16844 |
| 93.10 Removed | †16844 |
| 93.41—93.62 Removed | †16844 |

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| 100.4 Revised | †16844 |
| 121.25 Removed | †16844 |
| 128.2 Revised | 36962 |
| 128.3 Redesignated as 128.5; new 128.3 added | 36962 |
| 128.4 Added | 36962 |
| 128.5 Redesignated from 128.3 | 36962 |
| 128.10-128.23 (Subpart B) Heading revised | 36963 |
| 128.11a Added | 31527 |
| 128.13a | 31527 |
| 128.14a Added | 31527 |
| 128.17a Added | 31527 |
| 128.30-128.37 (Subpart C) Added | 36963, 37362 |
| 128.35 Added | †8020 |
| 128.36 Added | †8020 |
| 129 Added | 44120 |

## 1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

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| 1.1-1.6 (Subpart A) Appendix C and D revised | 29290 |
| Appendix D amended | 49090 |
| Appendix G amended | 29290 |
| Appendix K revised | 29291 |
| 1.20-1.36 (Subpart C) Added | 45684 |
| Appendixes A-L added | 45711 |
| 9 Authority citation revised | 50717 |
| 9.2 Revised | 50717 |
| 9.3 (b) revised | 50717 |
| 9.5 (a) revised | 50717 |
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| 9.7 (b), (c), (e), and (f)(5) revised | 50717 |
| 9.9 Revised | 50718 |
| Chapter I | |
| 12 Added | Δ6760 |
| 51 Table of contents revised | 51035 |
| Revised | 53355 |
| Technical correction | 54241 |
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| 51.11 (b) amended | 51036 |

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| 51.21 Redesignated from 51.20(e) and amended | 51036 |
| 51.22 Redesignated as 51.23 | 51036 |
| 51.23 Redesignated from 51.22, (a) and (b) revised | 51036 |
| 51.24 Redesignated as 51.25 | 51036 |
| 51.25 Redesignated from 51.24, (a) revised | 51036 |
| 51.26 Redesignated as 51.27 | 51037 |
| 51.27 Redesignated from 51.26, (h) revised | 51037 |
| 51.31 Redesignated as 51.41 | 51037 |
| 51.34 Redesignated as 51.43 | 51037 |
| 51.40-51.75 (Subparts E and F) Redesignated as F and G; new Subpart E added | 50029 |
| 51.41 Redesignated as 51.71 | 51037 |
| 51.41 Redesignated from 51.31; heading revised | 51037 |
| 51.43 Redesignated from 51.34 and amended | 51037 |
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| 51.56 Redesignated as 51.86 | 51037 |
| 51.57 Redesignated as 51.87 | 51037 |
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| 51.68 Redesignated as 51.98 | 51037 |
| 51.71 Redesignated from 51.41; heading revised | 51037 |
| 51.86 Redesignated from 51.56; (d) amended | 51037 |
| 51.87 Redesignated from 51.57; (d) revised | 51037 |
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| 51.98 Redesignated from 51.68; (a) amended | 51037 |
| 81 Nomenclature change | 32121 |
| 93 Nomenclature change | 32131 |
| 128.16a Removed | Δ26680 |
| 128.20 Removed | Δ26680 |
| 128.31 Heading and text revised | 46102 |
| 128.32 Heading and text revised | 46102 |
| 128.33 Heading and text revised | 46102 |
| 128.34 Heading and text revised | 46102 |

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| 1.2 (c)(1)(iii) revised | *9382 |
| 1.6 (g)(1)(i) and (3)(i) revised; (g)(3)(ii) amended | 51396 |
| (g)(1)(i) and (3)(i) revised; (g)(3)(ii) amended | *2314 |
| 8 Added; eff. 9-27-77 | *33027 |
| 13 Added | 55180 |
| Appendix II corrected | *3841 |
| **Chapter I** | |
| 51.0-51.4 (Subpart A) Revised | *18364 |
| 51.10-51.19 (Subpart B) Revised | *2197 |
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| Revised | *18372 |
| Technical correction | *19479 |
| 52 Added | 44842 |
| 52.23 (c) time limitation | 50369 |
| 101 Added | *1472 |
| 103.11 Amended | 27832 |
| 103.46 (b) revised | *33033 |
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| 0.735-39 (a) through (c) revised | †17471 |
| 2 Appendix A revised | 35956 |
| 4.1 Amended | 60741 |
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| 10.0 Revised | 38352 |
| 10.2 (a) amended | 38352 |
| 10.4 (c) revised; (d) removed; (e) redesignated as (d) | 38352 |
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| 10.6 (b)(2), (c), and (d)(1) removed; (b)(1) and (d)(2) redesignated as (b) and (c) | 38352 |
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| 10.31 Redesignated as 10.32; new 10.31 added | 38353 |
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103.24 Revised......63774
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1.5 (b)(2) revised; (b)(3) and (4) added......Δ10061
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51.0 Guidelines......Δ18224
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51.53 (b) revised......40223
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| 13.8 Added | *30622 |
| 13 Appendixes I and II revised; Appendixes I(F) and II(F) added | *30622 |
| 15 Added | *39842 |
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## 1980—1981

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| 51 Incorporation by reference Approvals | †33980 |
| 51.55 Added | †1122 |
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| 128.11 Revised | 83213 |

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